AN EXPLORATION OF PROSECUTORIAL DISCRETION IN PLEA BARGAINING IN PHILADELPHIA

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SAFETY+JUSTICE CHALLENGE
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Launched in 2019, the Consortium advances criminal justice research, grounded in the efforts and data of Safety and Justice Challenge sites, to expand the field's collective knowledge of how to safely reduce the overuse and misuse of jails and racial and ethnic disparities through fair and effective pretrial reforms. The Consortium comprises research organizations that develop and are granted projects under independent review by a panel of academic, policy, and practice experts, including people with lived experience. The Consortium is managed by the Institute for State and Local Governance at the City University of New York.

Executive Summary

As we have come to reckon with our nation's overreliance on carceral punishment and the mass incarceration of people of color, particularly Black people, experts are turning to a key system point that is the primary method for resolving most criminal cases: plea bargaining. Plea bargaining involves negotiation between a prosecutor and, often, a defense provider on behalf of their client. Prosecutors hold a lot of discretion over how to proceed regarding plea bargains, including whether to offer a plea agreement, when to do so, and what they wish to offer. Despite the wide use of plea bargaining, little is known about the practice, largely because it happens outside of public view and little is documented by the key actors involved—prosecutors.

To better understand prosecutorial discretion in plea bargaining, the Urban Institute was funded by the MacArthur Foundation through the Safety and Justice Challenge (SJC) Research Consortium, which is managed by the CUNY Institute for State and Local Governance (ISLG), to conduct a study on plea bargaining policies, practices, and outcomes. The Philadelphia District Attorney's Office (DAO) agreed to partner with Urban to shed light on the inner workings of plea negotiations and how they are viewed by different parties involved in the process, including attorneys and people who accept pleas. The DAO's partnership provided a rare opportunity to learn more about prosecutorial decisionmaking in plea bargaining in a single office and how this could inform policy and practice more broadly. This unparalleled look into prosecutorial decisionmaking owes to the forthrightness of the assistant district attorneys (ADAs) we interviewed and surveyed. The DAO's cooperation made it possible for Urban's research team to read policies on plea offers, analyze a deidentified sample of the office's case files, and hear from the ADAs to learn more about their decisionmaking during plea negotiations. Notably, this report is an exploration of discretion in plea bargaining in one office, not an impact evaluation of policies.

In this report, we discuss findings from our exploratory single-site study, in which we used qualitative and quantitative data to answer research questions of interest. Our activities included a policy review; analysis of administrative data from 2018 to 2021; interviews with 11 Philadelphia ADAs, 9 defense providers, and 5 people who accepted pleas; a case file review of 115 cases; and a survey of 65 ADAs. Because prosecutorial discretion in plea bargaining is not well documented in data, the best way to learn about discretion is by speaking with prosecutors; thus, this report focuses primarily on our qualitative findings. We organized our findings by three main topics: policies and goals of plea bargaining, trends in plea offers and outcomes, and decisionmaking and perceptions of key actors. We end the report with a discussion of policy implications.

We used our policy review and ADA interviews and survey to determine what policies guide decisionmaking and the goals of plea bargaining. Prosecutors' wide discretion in the plea bargaining process is constrained to different degrees by sentencing guidelines, supervisory control, and a limited number of DAO officewide policies. Despite finding that there is no formal mechanism for holding ADAs accountable for following policies, a 2021 DAO report found a high level of adherence to officewide policies on negotiated pleas established in 2018 and 2019.[1] Interviewed and surveyed ADAs expressed that individual ADAs have limited training on plea bargaining.

We surveyed ADAs to learn more about what they believe are the most important goals of plea bargaining, and the most common responses included providing justice to victims, defendants, and the community. However, plea bargaining can result in outcomes that undermine this goal of providing justice to defendants; nearly half of the ADAs we surveyed thought innocent people "sometimes" or "often" accept guilty pleas—a belief that is confirmed by a database tracking exonerations.[2] As we learned from our interviews with people who accepted pleas in Philadelphia, defendants accept pleas despite asserting their innocence, because of time pressures, custody status, and the comfort of certainty of outcomes.

Our quantitative analysis of administrative data and case files was intended to assess trends in plea offers and outcomes. Like other prosecutors' offices across the country, the DAO does not systematically record plea agreement offers. Because this was an exploratory study, all quantitative findings are descriptive rather than causal.

Through our descriptive analysis of administrative data, we found that the most common sentence for people who accept pleas is probation, and average maximum probation lengths are longer than two years. Of the people in the sample of case files with negotiated pleas that we reviewed, those who were in pretrial detention generally received worse plea outcomes than those who were released, though this may be driven partly by other differences between cases for people who are and are not detained. Though most offers remained the same over time, we also found that, in the cases in this sample with more than one offer, the offers mostly became more lenient over time.

In our analysis of the descriptive administrative data and our review of case files, we found that Black people generally received worse plea outcomes—including longer sentences and more custodial sentences—than white people. However, in our case file review, we also identified differences between white and Black defendants' prior record scores and the severity of their charges.[3] On average, Black defendants had more severe charges and higher prior record scores, leading to harsher sentence recommendations from the Pennsylvania Sentencing Guidelines and ultimately, worse plea

outcomes, which may be emblematic of structural racism throughout the criminal legal system in Philadelphia and across the country.

Most ADAs we interviewed and surveyed acknowledged that racial disparities are part of the criminal legal system and plea offers and outcomes; several believe disparities arise in plea offers because of policing practices, prior records, and implicit biases that can impact ADAs' decisionmaking. Prosecutorial decisionmaking in plea bargaining constitutes one point and one factor in a criminal legal system permeated by racial disparities. Interviews with defense providers and people who accepted pleas reflected similar themes; some added that the judge they were in front of and that judge's reputation for trial penalties often influenced defense attorneys' recommendations and defendants' decisions to accept pleas.

Based on these findings, we make the following recommendations for Philadelphia, which are also largely applicable to other jurisdictions:

- Moving forward, to assess the disparities and trends in plea offers empirically, standards should be created and followed for consistently collecting data on plea negotiations in prosecutors' offices and courts. Without such standards, it is difficult for researchers to accurately assess outcomes or policy impacts in a given office.
- More official and routine mechanisms for examining plea bargaining decisionmaking and adherence to office policies can be established. The Philadelphia DAO is ahead of other prosecutors' offices in that it has written policies for plea bargaining, but it can benefit from consistently monitoring performance and reviewing plea offers earlier to ensure ADAs are following policies.
- According to our ADA survey, the primary goal of plea bargaining is to ensure fairness in our criminal legal system. The DAO could establish checkpoints throughout the plea bargaining process to reconsider whether to withdraw cases rather than extend particularly low plea offers.
- According to people who went through the plea process, one of the main motivators for accepting a plea was avoiding a worse sentence at trial. This threat limits people's ability to exercise their Sixth Amendment right to a trial. We also learned from them that reforms to the problems related to plea bargaining cannot be limited to one actor. Courts can mitigate the perceived coercive nature of the trial penalty by capping sentence lengths relative to the most lenient plea offer.

- We heard from ADAs and defense providers that the Pennsylvania sentencing guidelines can reinforce racial disparities by depending heavily on past offenses for current sentencing recommendations, which has disparately harmed people of color (particularly Black people), who tend to be overpoliced and underresourced. These guidelines are the basis of all sentences and plea offers and are not free of bias. To eliminate disparities in sentencing, courts should consider adjusting guidelines to account for structural factors driven by racism.

An Exploration of Prosecutorial Discretion in Plea Bargaining in Philadelphia

Plea bargaining is when a prosecutor and a defendant, usually through their attorney, negotiate to reach case resolution outside of a trial process with the aspirational goal of achieving a better outcome for all parties—attorneys, judges, and defendants. A guilty plea can be considered a better outcome for court actors who have limited time and resources to take cases to trial. It may also benefit a defendant who could face more serious charges or sentences at trial. Plea bargaining can happen at any time from arrest to criminal charging to disposition or even before a verdict is reached at trial. A plea bargain is also called a plea offer, plea agreement, or negotiated plea. A person could plead guilty without accepting a plea offer.[4] However, this report focuses exclusively on prosecutorial discretion in negotiated pleas.

A negotiated plea is when a defendant admits guilt and accepts a plea offer with a sentence that is negotiated with a prosecutor. The agreed-upon terms of the plea agreement are almost always accepted by the judge, who does the official sentencing. Accepting a plea offer means a person accused of a crime agrees to plead guilty and relinquish their right to a trial (and sometimes their right to appeal) in exchange for the possibility of a lighter charge, a lesser sentence, or an alternative prosecution path, such as diversion. Prosecutors benefit from plea bargaining by gaining certainty of resolution, as well as faster case processing timelines.

Plea bargaining has been a staple of the criminal legal system for several decades, but it was only constitutionally upheld in 1970 in *Brady v. United States*. Whereas some view plea bargaining as contributing to net-widening and unfair punishment,[5] others consider it a necessary device for expediting an already lengthy criminal process.[6] In our criminal legal system, plea bargains, not trials, are the key driver of guilty outcomes. More than 90 percent of felony convictions in state courts are resolved by guilty pleas.[7] Prosecutors, defense attorneys, and judges each have their own set of incentives for promoting the use of plea bargaining, but all cite the lack of resources for trying cases drives pleas.[8] Further, defendants face unique incentives when considering pleas, including the perception that going to trial is associated with harsher outcomes.[9]

Numerous factors influence decisionmaking around plea bargaining. Charge severity, strength of evidence, and the defendant's criminal history are key determinants of whether someone will accept a plea.[10] In some states, sentencing guidelines play a large role in the plea process; pretrial detention significantly increases a person's likelihood of accepting a plea deal[11]—by 46 percent, according to one study.[12] A defendant's extralegal characteristics, including gender, race, and age, can also place them at a particular disadvantage. Generally, being white is associated with more favorable plea offers and outcomes.[13] One study found that white defendants were 25 percent more likely than Black defendants to have their initial charges dropped or reduced to lesser charges via plea bargaining, making them less likely to be convicted of felonies.[14] Though plea bargaining significantly impacts case outcomes, it is largely informal, occurs out of public view, and involves a changing set of circumstances, all of which make systematically recording its process and decisionmaking factors difficult.[15]

Prosecutorial Reform in Philadelphia

The Urban Institute partnered with the Philadelphia District Attorney's Office (DAO) to learn more about its plea bargaining practices and policies. Philadelphia has been a unique site to work with since the arrival of Larry Krasner, a reform-minded district attorney (DA). Philadelphia's recent DAs have varied ideologically; the two who preceded Krasner were a staunchly pro–death penalty DA and a more reform-minded leader who resigned. These changes in lead prosecutor, and thus the DAO's policies, have directly impacted Philadelphia's more than 1.5 million residents, the majority of whom are people of color.[16]

Like Krasner, the DA elected before him, R. Seth Williams, also implemented reforms that had positive impacts on the Philadelphia criminal legal system. For instance, Williams joined the MacArthur Foundation's Safety and Justice Challenge (SJC) to further reduce the city's jail population (the city had started decreasing that population in 2014).[17] However, he faced controversies related to political favors, and his seven-year term in office ended in 2017 with a federal conviction.[18] Preceding Williams, Lynne Abraham served as prosecutor starting in 1991 and was elected four times, remaining in office for almost 20 years. Abraham had the opposite stance from Krasner, despite being in the same political party—she was the chief prosecutor in an office that sought death sentences in more than 100 cases, and one report found her to be one of the five deadliest prosecutors in the country.[19]

Coming from a civil rights background, Krasner ran a campaign vowing to reduce mass incarceration and supervision in Philadelphia.[20] He ran for office in 2017, appealing to the city's

residents who had been touched by the criminal legal system and advocating for strong reforms to a criminal legal system that he and those who elected him felt had not been working.[21] After taking office, he removed several prosecutors from the DAO whom he felt did not fit his vision for the office, and others left voluntarily.[22] Sixty percent of prosecutors have left since 2017, and he has since spent time building his staff, including by recruiting recent graduates from renowned law schools across the country.[23] A *Philadelphia Inquirer* article found that of the 53 prosecutors hired in 2021, three-fourths them had been admitted to the bar that year.

Krasner is part of a larger progressive prosecution movement; several others have made similar campaign promises or policy reforms in prosecutors' offices across the country.[24] These prosecutors are using their distinct legal power to combat mass incarceration, including by lowering bail requests and altering charging and plea bargaining practices, in addition to exercising other powers prosecutors hold. Krasner has prioritized reconsidering the office's use of the death penalty, declining to charge certain cases at all (possession of marijuana, sex work) and limiting parole and probation terms.[25] In 2021, he won reelection with an overwhelming percentage of the vote (69 percent). As other progressive prosecutors have won elections, some on the left and right have criticized this movement for what they perceive as lenient policies, exemplified recently in the June 2022 recall election of District Attorney Chesa Boudin in San Francisco.[26] Krasner himself currently faces an impeachment attempt by the Pennsylvania General Assembly.[27]

As an SJC site since 2015, Philadelphia has implemented several pretrial reforms that predate the election of Krasner. Now is a critical time for examining prosecutorial discretion in the plea bargaining process, particularly because incarceration has been used decreasingly since before the pandemic and Krasner's initial election.[28] Though not all his reforms directly relate to plea bargaining, they may have implications for prosecutors' decisions to offer pleas and the types of pleas they offer. (For example, expedited plea offers and felony diversion initiatives implemented by the city directly involve plea negotiation.) In short, reforms to Philadelphia's criminal legal system reflect the broader movement to reduce incarceration and racial disparities more than the changes implemented under Krasner. But the recent shift to a more transparent and data-informed office allows for a first-of-its-kind look at prosecutorial discretion in Philadelphia's plea negotiation process. Importantly, this research incorporates the perspectives of the people who have been most directly impacted by plea bargaining—those who have accepted pleas—to more fully situate how pleas are accepted and what factors impact plea outcomes.

Methodology

We implemented a mixed-methods design incorporating qualitative and quantitative data to answer our research questions of interest. We worked with the DAO and representatives from the First Judicial District of the Pennsylvania court system to analyze the courts' administrative data and a sample of the DAO's case files. Our qualitative methods included a policy review, semistructured interviews, and a survey of assistant district attorneys (ADAs) in the DAO. We reviewed administrative data and case files from the Philadelphia Municipal Court (MC), where most misdemeanor pleas occur, and the Court of Common Pleas (CP), where felony pleas occur. We interviewed current ADAs, former defendants who accepted pleas, and criminal defense providers. All of these activities contribute to our understanding of the depth of prosecutorial discretion in plea bargaining and helped us identify trends in plea bargaining outcomes. Table 1 summarizes key information on our research methods.

TABLE 1

Methods and Sample Sizes in Urban's Study of Prosecutorial Discretion in Plea Bargaining in Philadelphia

Method	Population or data analyzed	Sample size
Policy review	Documented policies since 2018	N/A
Interviews	Assistant district attorneys in a variety of prosecution units	11 (225 total ADAs)
	Former and current defense providers	9 (4 current public defenders, 3 private defenders, 2 participatory defenders)
	People who accepted pleas in Philadelphia	5
Survey	All assistant district attorneys	Responded: 65 (29 percent response rate) ▪ ADAs who offer pleas: 32 ▪ ADAs who supervise others who offer pleas: 15 ▪ ADAs who do not offer pleas or supervise those who offer pleas: 18
Administrative data analysis	Cases disposed in 2018–2021 resulting in a final disposition of guilty	26,513 cases
Case file review	Random sample of negotiated plea cases from 2016 and 2019	115 cases (of 16,734 total cases)

Sources: Philadelphia First Judicial District administrative court data provided through the Institute for State and Local Governance, case file review sample of Philadelphia District Attorney's Office case files provided by the Philadelphia District Attorney's Office, Urban Institute 2022 survey of Philadelphia ADAs, and Urban Institute 2021–2022 interviews with ADAs, defense providers, and people who accepted pleas.
Note: ADA = assistant district attorney.

Using this mixed-methods approach, we aimed to answer the research questions shown in table 2.

TABLE 2

Research Questions and Data Sources in Urban's Study of Prosecutorial Discretion in Plea Bargaining in Philadelphia

Research questions	Policy review	Interviews	Survey	Admin data	Case file review
1. What official policies, common practices, or guidelines exist around plea bargaining, and how do they affect prosecutorial decisions?	X	X	X		
2. What are the overarching goals, from a prosecutor's perspective, that influence plea practices? What mechanisms are in place to assess performance in meeting these goals?	X	X	X		
3. How do plea bargaining approaches vary (e.g., by specialty unit), and to what degree do these approaches lead to prosecutors' desired outcomes?	X	X	X		
4. What, if any, administrative data on plea offers are available?				X	X
5. What are the basic trends in plea outcomes?				X	X
6. How do plea offers and outcomes vary by a defendant's race/ethnicity and other demographic characteristics?				X	X
7. If racial disparities exist in plea bargaining, what factors and circumstances of the defendant, their case, or related external issues contribute to these disparities?		X	X		
8. How is an initial plea offer made and what types of factors influence the type of offer?		X	X		
9. How do prosecutors make decisions about changes to plea offers throughout the plea bargaining process?		X	X		
10. What are the perceptions of defense providers and defendants regarding plea negotiations and outcomes?		X			

Source: Urban Institute 2022 study of prosecutorial discretion in plea bargaining in Philadelphia.

Policy Review

Urban's research team held introductory conversations with people at the DAO to begin exploring prosecutorial discretion in plea bargaining. The research team requested and received copies of DAO policies related to plea bargaining, including an ADA handbook and policy initiatives that began when Krasner took office (see appendix C for a full list). We were not able to access policies instituted before Krasner's tenure. We learned from our partners in the District Attorney's Transparency Analytics (DATA) Lab at the DAO that there were few written DA policies before Krasner and, as we learned from ADA interviews, practices were informally learned on the job.

Interviews

We needed to look beyond case-level data on plea offers and outcomes to understand more about prosecutorial discretion and decisionmaking. To do this, we accessed a list of ADAs along with their contact information. We identified interviewees based on those the DAO highlighted as particularly engaged in plea bargaining, and we chose others in units we knew commonly offer pleas, like the Pretrial and Major Trials Units. We held hour-long interviews with 11 ADAs who were either actively engaged in plea negotiations or were supervisors or were designing policies for those who negotiate pleas. Our interview protocol included questions about the plea process, factors impacting plea offers, and racial disparities. Our sample included

- three ADAs from the Pretrial Unit, the unit that works in "Smart Rooms," which is where the first plea offer is conveyed for felony cases in CP court;
- four ADAs from the Major Trials Unit, which is where many cases go after the Pretrial Unit if the pretrial offer in the Smart Room is not accepted;
- two ADAs from the Charging Unit;
- one ADA in the Homicide Unit; and
- one ADA who worked in the executive office.

Interviewees' tenures in the DAO ranged from 2 to 11, with 7 of the 11 joining the DAO after Krasner took office. Four of the ADAs had either previously interned or worked in a public defender's office.

We also sought to speak with defense providers because they are also active agents in plea negotiations. Although the Defender Association of Philadelphia declined to formally help recruit its members to take part in our study, we received referrals from others working in Philadelphia's legal system and ultimately interviewed four current public defenders from multiple Defender Association units. We decided to look to private defense and participatory defense providers to incorporate additional defense voices in the study. We spoke with three private defense attorneys, all of whom had worked with the Defender Association. We also spoke with two participatory defense providers about their collaborations with defenders and defendants.[29] We asked them about factors that impact the advice they give clients on whether to accept a plea, the pressures their clients face, Krasner's impact as DA, and their recommendations for reforming plea bargaining.

Lastly, it was important to hear directly from people who had accepted plea offers in Philadelphia. Though we initially struggled with remote recruitment during the COVID-19 pandemic, we were able

to use social media advertisements to connect with five people who had accepted pleas in Philadelphia. Our only criterion was that they not have an open criminal case in Philadelphia. Four of those five people accepted a plea between 2010 and 2015, and fifth resolved their case in 2001. Their plea offers involved a variety of offenses, including two drug offenses, one DUI, one robbery, and one assault. Two of the people were detained pretrial.

Survey

Our survey of DAO ADAs enabled us to follow up on themes we learned from interviews with ADAs, defense providers, and people who accepted pleas. The survey was sent to 225 ADAs between May and June 2022. It was sent to all prosecutors in the office, though it was specific to plea bargaining. We created universal questions about the goals behind plea bargaining and perceptions of racial disparities, and tailored additional questions for those heavily engaged in plea bargaining. We received 65 responses for a response rate of about 29 percent.

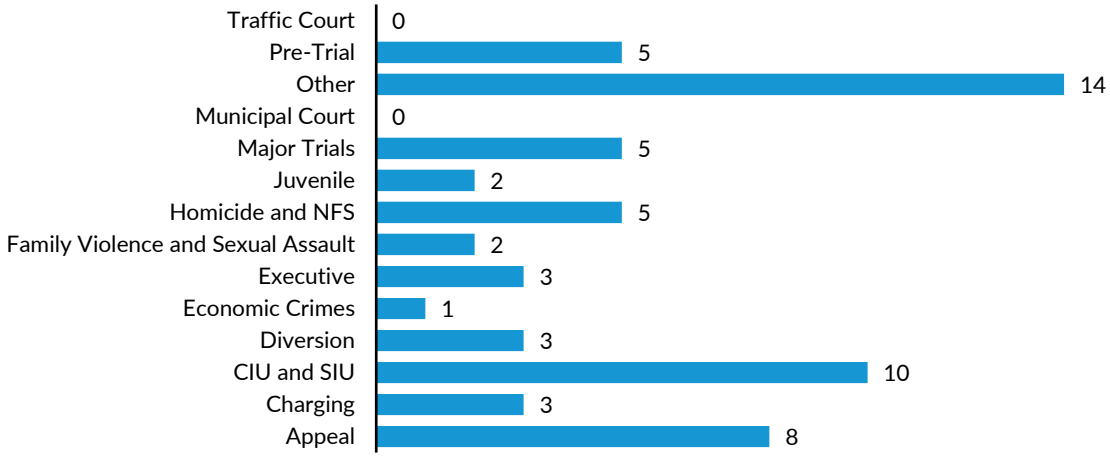
About 64 percent (*n*=38) of ADAs who responded to the survey joined the DAO after Krasner was elected. They have a wide range of backgrounds, and 34 percent (*n*=23) began at the DAO directly after law school. About one-quarter of respondents previously worked in criminal defense.

About 23 percent of respondents were in our "other" units, including the Gun Violence Task Force, Mental Health, Immigration/Emerging Adult, and Post-Conviction Relief Act Units (figure 1). Another 16 percent were in the Conviction Integrity Unit/Special Investigations Unit,[30] and 13 percent came from the Appeals Unit. Five respondents were from the Pretrial Unit, Major Trials Unit, and the Homicide and Non-Fatal Shooting Unit.

All ADAs we surveyed currently work on CP cases rather than MC cases. About 57 percent offered pleas in their current roles and 27 percent supervised staff who offered pleas.

FIGURE 1

Breakdown of Assistant District Attorneys We Interviewed by Philadelphia District Attorney's Office Unit



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Source: Urban Institute 2022 survey of Philadelphia assistant district attorneys.
Notes: *N*=61 assistant district attorneys. Four missing due to submitting blank surveys.

Administrative Data Analysis

Urban initiated a request for data through the City University of New York's Institute for State and Local Governance (ISLG) and the Philadelphia Managing Director's Office for administrative records provided by Philadelphia as part of its SJC implementation. Through the MacArthur Foundation, we received deidentified administrative data from the Philadelphia First Judicial District and the Philadelphia Department of Prisons in September 2021.[31] The court data included misdemeanor and felony cases initiated and disposed in MC and CP between May 2013 and May 2021. Administrative data were provided through ISLG in the fall of 2021. ISLG is providing data from the Philadelphia First Judicial District annually, and cases that are sealed or expunged at the time of data transfer are not included. This excludes some charges and cases that did not lead to conviction, which impacts our ability to examine trends in cases overall but only has a limited impact on our ability to review cases that ended in plea bargains. Additionally, because MC and CP use different identifiers, individual cases cannot be linked if they travel from MC to CP. For a comprehensive overview of case processing in the Philadelphia courts, see appendix A.

We merged and restructured the data to the individual case level after we met with ISLG and court research staff who were familiar with these data files and local court case processing. We decided to retain only cases disposed from 2018 to 2020. We removed cases disposed earlier than

2018 because we were aiming to understand how cases have been disposed since Krasner was elected. Moreover, we present cases from 2020 separately because of differences in case processing resulting from the pandemic. We further limit our sample to cases resulting in guilty outcomes because we are missing cases had been sealed or expunged when data were transferred to ISLG, resulting in some systematic missingness in the data based on case outcomes. The observational level of the final data is the docket number—in Philadelphia each person involved in a case is provided a unique docket number. This means that some people have multiple observations in the data because of their involvement in multiple cases during the period captured in the data. Additionally, for 31 docket numbers there were two final associated dispositions, and for these we kept both observations in the data. We removed 2 cases because court type was missing, resulting in a final data set of 26,513 cases with information on lead charges, counsel type, final disposition, and sentencing. More than half (60 percent) of cases resulting in an outcome of guilty or no contest concluded in CP court, and the rest concluded in MC.

Case File Review

A key goal of this study was to describe the types of plea offers ADAs make and how they change. Urban worked with the DAO to establish a protocol for a case file review of on-site records because this type of dynamic information is unavailable in administrative data. Urban developed a data-collection form—or case coding sheet—to standardize the information collected on plea offers and outcomes. We worked closely with DAO staff to finalize the set of variables and variable values to include based on information available in case files. Urban then selected a proportionate random sample of cases by court type and oversampling of cases disposed in 2019. The final sample of 150 cases included 113 cases disposed in CP court (23 disposed in 2016 and 90 disposed in 2019) and 37 cases disposed in MC (7 disposed in 2016 and 30 disposed in 2019). We chose this distribution of cases across two different periods representing before and after Krasner's election, with more cases sampled in 2019. We oversampled CP cases because ADAs said the majority of plea bargaining occurs in that court. Also, analysis of court data indicated that about 60 percent of cases disposed by negotiated guilty plea were in CP court.

Once sampled, we provided a case list to the DAO so their Data Lab staff could manually review physical case files, and they also cross-checked information with the DAO case management system. DAO staff completed case coding sheets rather than Urban researchers because of access restrictions. The DAO hired two research interns to compile case file documents, including pretrial offers used in CP court, and code information into the case coding sheet while also deidentifying the information.

The DAO was able to review 115 of the 150 selected cases (table 3). The remaining 35 cases were not reviewed either because (1) they could not be located, or (2) prior records were unavailable across all databases. The characteristics of the case file sample somewhat mirror the full population of cases in the administrative data from 2016 and 2019 with a negotiated guilty plea, with notable similarities in defendants' age and race and whether a felony was the lead charge, and notable differences in sentence length and type (appendix B).

TABLE 3

Case File Sample for Urban's Analysis of Plea Bargaining in Philadelphia, by Year Disposed and Court Type

	2016	2019	Total
Court of Common Pleas	18	73	91
Municipal Court	0	24	24
Total	18	97	115

Source: Case file review sample of Philadelphia First Judicial District administrative court data provided through the Institute for State and Local Governance.

Major Findings

We organize our findings into three themes: (1) policies and goals of plea bargaining, (2) trends in plea offers and outcomes, and (3) decisionmaking and perceptions of key actors. We further organize them as they relate to our 10 research questions. Some of those questions are about patterns and trends in plea outcomes, whereas others involve the factors and circumstances that influence prosecutorial decisionmaking around plea bargaining in Philadelphia.

Policies and Goals of Plea Bargaining

Research questions	Data sources
1. What official policies, common practices, or guidelines exist around plea bargaining, and how do they affect prosecutorial decisions?	Policy review
2. What are the overarching goals, from a prosecutor's perspective, that influence plea practices? What mechanisms are in place to assess performance in meeting these goals?	Survey of assistant district attorneys
3. How do plea bargaining approaches vary (e.g., by specialty unit), and to what degree do these approaches lead to desired outcomes?	Interviews with assistant district attorneys

PLEA BARGAINING POLICIES, PRACTICES, AND GUIDELINES

Using data from the policy review, interviews with ADAs, and the survey of ADAs, we found there are a limited number of policies impacting prosecutors' decisionmaking in plea bargaining, and individual prosecutors think they exercise a fair amount of discretion. Still, the policies of DAO leadership, sentencing guidelines, and supervisory oversight all provide bounds on their discretion.

The policies of DAO leadership offer some guidance on plea bargaining, but how they ultimately constrain discretion is uncertain. Prosecutors' offices often do not have formal policies related to plea bargaining or do not make them available publicly. Krasner documented and publicized several policies after assuming office (all detailed in appendix C), putting Philadelphia ahead of most jurisdictions in terms of transparency. Four of these policies have direct implications for prosecutorial decisionmaking in plea bargaining. Perhaps the most relevant ones we reviewed that guide prosecutorial discretion in plea bargaining are in a memorandum entitled "New Policies," which took effect in early 2018. Among other reforms, that memorandum directs ADAs to offer sentence lengths that are shorter than the low end of the sentencing range for certain offenses or seek supervisory approval to offer sentence lengths above that low end of the range. Further, the policy states that if sentencing guidelines recommend less than two years of detention for a crime, the ADA "should" proceed with house arrest, probation, or other alternatives.

Krasner also issued "New Policies to End Mass Supervision," which took effect in early 2019 and was intended to address high supervision rates and long supervision periods. It sets an officewide goal for an average supervision period of 18 months or less with a ceiling of 3 years for felonies, and an average of 6 months or less with a ceiling of 1 year for misdemeanors. In 2022, Krasner followed up on these with "Supervision Policies Part III." Along with expanding early termination of probation in certain circumstances, this policy says ADAs "will" inform the defense about the possibility of early termination of probation during plea negotiations. It also says ADAs "will" codify that possibility by asking the court to put conditions for early termination in a sentencing order.

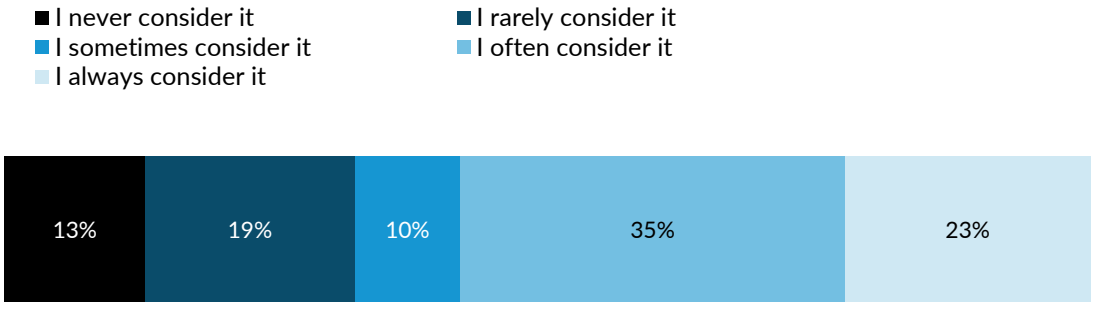
Lastly, at the start of the COVID-19 pandemic in 2020, Krasner issued the policy memorandum "Acceleration of DAO Reforms in Response to COVID-19 Emergency" to address overcrowded jails amid the public health crisis. Though most of the memorandum focuses on charging and bail decisionmaking, it adds that ADAs "may exercise options to delay prosecution" for cases that do not present a public safety risk. The slowing of case processing owing to court closures and pandemic-related health risks may have affected plea bargaining, including changes in the strength of cases (e.g., due to availability of witnesses) and pressure of lengthy case proceedings on defendants.

Krasner's rules mentioned above are presumptive, not mandatory. His policies have exceptions, including that they are presumptive in "appropriate cases" and not applicable to some units that deal with homicides, violent crimes, sexual assault crimes, crimes in which people with felony convictions possessed a weapon, attacks on the integrity of the judicial process, and economic crimes involving losses of $50,000 or more. This degree of discretion as to when a case is "appropriate" was discussed in interviews. We asked ADAs to reflect on whether any officewide policies impacted their plea bargaining decisionmaking. Four did not reflect on or could not recall specific policies; two belonged to units exempt from many relevant officewide policies. Three stated that there were limits on incarceration and probation terms and that there were policies for offering pleas below the mitigated range on the sentencing matrix for most nonviolent offenses, referring to the Krasner-era policies on community supervision and custody lengths.

Survey responses were consistent with our interviews. We asked ADAs who either offered pleas or supervised prosecutors who did so (*N*=31) whether they actively considered officewide policies during plea negotiations; about two-thirds of respondents said they do (*n*=20). When asked specifically about the Krasner-era policy to offer pleas below the bottom end of the mitigated range of the sentencing guidelines for most nonviolent offenses, the majority of the same pool of respondents said they "often" or "always" consider that policy when crafting a plea offer (figure 2). Several of those who responded that they "never" consider the policy were assigned to units exempt from the policy.

FIGURE 2

How Does District Attorney Krasner's Policy on Sentencing Guidelines Factor into Your Decisionmaking during Plea Bargaining?



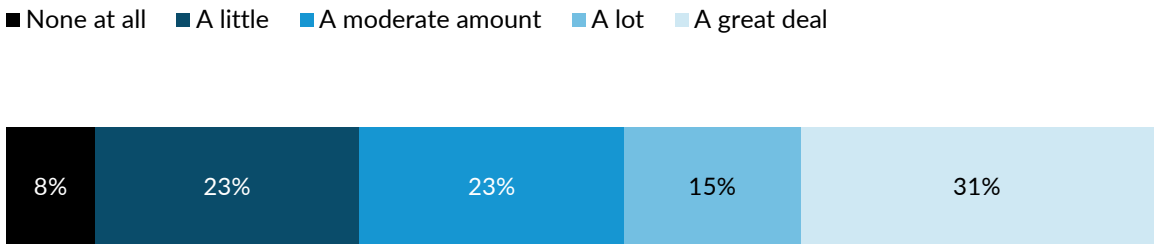
URBAN INSTITUTE

Source: Urban Institute 2022 survey of Philadelphia assistant district attorneys.
Note: Thirty-one total responses. Seven missing due to blank surveys.

Assistant district attorneys believe they exercise wide discretion in plea bargaining decisionmaking, but also indicated there is little DAO training on plea bargaining. Our survey asked ADAs to assess how much discretion they have in plea bargaining. About 42 percent of those who offer pleas thought they had a moderate amount of discretion (*n*=11), 35 percent thought they had a lot of discretion (*n*=9), and 15 percent thought they had a great deal of discretion (*n*=4). Only 8 percent thought they had only a little discretion (*n*=2) and no one indicated that they had none (figure 3).

FIGURE 3

How Much Discretion Do You Feel You Exercise in Plea Negotiations?



URBAN INSTITUTE

Source: Urban Institute 2022 survey of Philadelphia assistant district attorneys.
Note: Thirteen total responses. Two missing due to blank surveys.

Assistant district attorneys are split on how the level of discretion for an ADA has changed from the previous administration to the Krasner administration. Three ADAs who were actively involved in plea bargaining and started at the DAO before Krasner said their discretion had increased since the previous administration; another four said it had not changed, and only one said their discretion had decreased. This is particularly interesting because formalized policies would seem to be more prescriptive and function to limit discretion, but we learned in our interviews that ADAs were tightly limited to sentencing guidelines and had little room to deviate from them under the previous administration. They could not, for instance, offer sentences below the guidelines, even when the guidelines' range would be particularly harsh for certain cases. However, three of four ADAs who started at the DAO before Krasner who do not engage in plea bargaining thought discretion had decreased since the previous administration; the fourth said discretion had not changed.

We also asked supervisors about how much discretion their supervisees have in plea bargaining. Their responses (*n*=13) were more split: 46 percent indicated their supervisees exercise "a lot" or "a

great deal" of discretion (*n*=6) and 31 percent indicated their supervisees had little to no discretion (*n*=4). We did not compare how discretion differs according to different factors, such as amount of experience or prosecution unit, but ADAs said that more experienced ADAs should have more discretion. One said more discretion is not necessarily better for those with less experience, who they felt offer inconsistent pleas. They stated that discretion is unchecked power, but "if you hire the right people then it should be okay."

There seems to be limited training specifically provided to ADAs on plea bargaining when they enter the DAO. Five ADAs we interviewed said there are no trainings available specific to plea bargaining in the DAO, whereas one said there were but could not remember details about them. Of the five who said there were no trainings, three started after Krasner took office and two had been in the office since District Attorney Williams. The person who indicated there were trainings started after Krasner took office. Our ADA survey had similar results: 62 percent of respondents who offer pleas stated they had not received training on plea negotiations and crafting offers (*n*=16).

In interviews, ADAs said some features of plea bargaining do not lend easily to training, including assessing mitigating and aggravating factors. We observed in interviews that to some, plea bargaining can seem like more of an art than a science, but that an opportunity to train less experienced and new ADAs on the office's policies and goals for plea bargaining might improve those ADA's discretionary decisions as they learn their profession.

Sentencing guidelines can impact what ADAs offer in a plea. A common theme across interviews and the survey was the importance of the Pennsylvania Sentencing Guidelines (box 1) for crafting plea offers. All 11 ADAs we interviewed said the sentencing guidelines impact their decisionmaking, but they consider the guidelines to different extents. Some use them as a jumping-off point and adjust based on new information. Others use them to craft offers, whereas two said the guidelines are dated or unfair. In fact, seven said that the guidelines put large weight on people's criminal histories, but that that factor has racial disparities baked into it because of policing practices and Philadelphia's previous era of tough-on-crime prosecuting. One ADA went further to say that the guidelines are antiquated and need to be reevaluated so that how they perpetuate racial disparities can be understood.

BOX 1

Pennsylvania Sentencing Guidelines

The Pennsylvania Commission on Sentencing promulgates a sentencing matrix, last updated in 2012,[a] that assists with judges' decisionmaking, but prosecutors also use it to decide how to craft plea offers (appendix D).[b] These guidelines are not binding, and judges have discretion to sentence outside the guideline calculation if they explain their rationale. The matrix creates a range of recommended outcomes based on the accused's prior record score and offense gravity score. Prior record scores can have a numerical range from 1 through 5 or fall into more serious "repeat" categories. Those with prior record scores above 5 are classified in the Repeat Felony 1 and Felony 2 Offense Category (RFEL). Those who score a 9 or higher are categorized in the Repeat Violent Offender Category (REVOC).[c] The offense gravity score is a number assigned to a crime that demonstrates the seriousness of an offense and ranges from 1 to 15.[d] The higher the number, the more serious the offense.

Cross-referencing the offense gravity score with the prior record score will indicate the recommended sentence in the matrix. To the right of the sentencing matrix there is an additional column for mitigating and aggravating factors to the offense.[e] These factors are all related to the nature of the offense and the person accused. This is largely up to the discretion of the judge making the sentence or the prosecutor offering the plea. They will assess whether there are aspects of the offense that warrant more severe or more lenient sentences. An example of an aggravating factor is whether the accused took a leadership role in the crime; an example of a mitigating factor that could lower a sentence or plea offer is whether the accused has expressed remorse. Neither type of factor is comprehensively detailed, and they vary largely by case, can be assessed subjectively, and leave much to judges' and prosecutors' discretion.

Notes:

[a] Sara Moyer, "Proposed Changes to Pennsylvania's Sentencing Guidelines," Gross McGinley LLP, July 26, 2022, https://www.grossmcginley.com/resources/blog/proposed-changes-to-pennsylvanias-sentencing-guidelines/.

[b] Basic Sentencing Matrix, Pennsylvania Code Title 204 Chapter 303. § 303.16(a).

[c] Prior Record Score—Categories, Pennsylvania Code Title 204 Chapter 303. § 303.4.

[d] Offense Gravity Score—General, Title 204 Chapter 303. § 303.3.

[e] Guideline Sentence Recommendations: Aggravated and Mitigated Circumstances, Pennsylvania Code Title 204 Chapter 303. § 303.13.

The reliance on sentencing guidelines has changed across administrations. Three ADAs we interviewed who have worked at the DAO since the previous administration said that administration had stricter policies for staying within sentencing guidelines, and that discretion to go outside of and below them increased after Krasner took office. Comparatively, in our ADA survey, about two-thirds of respondents (*n*=24) said sentencing guidelines or statutory requirements are either "important" or

"very important" in their decisionmaking. Only 1 respondent out of the 36 who made offers believe sentencing guidelines are "not important" to consider while making a plea offer.

Supervisory control can have major impacts on ADA's discretion in plea bargaining. Almost all the ADAs we interviewed said supervisors impacted their decisionmaking and limited their discretion. Four mentioned they were required to think through how to craft offers with their supervisors, and one added that ADAs with stricter supervisors may not be able to convey offers without their supervisors' explicit approval. Generally, ADAs with more supervisory oversight exercise less discretion. This is particularly interesting in light of the previous finding that new prosecutors receive little training on plea bargaining. Training could teach new ADAs office policy and how to exercise discretion; we learned from interviews that in the absence of training, discretion may depend on the orientation and personal skill sets of specific unit supervisors.

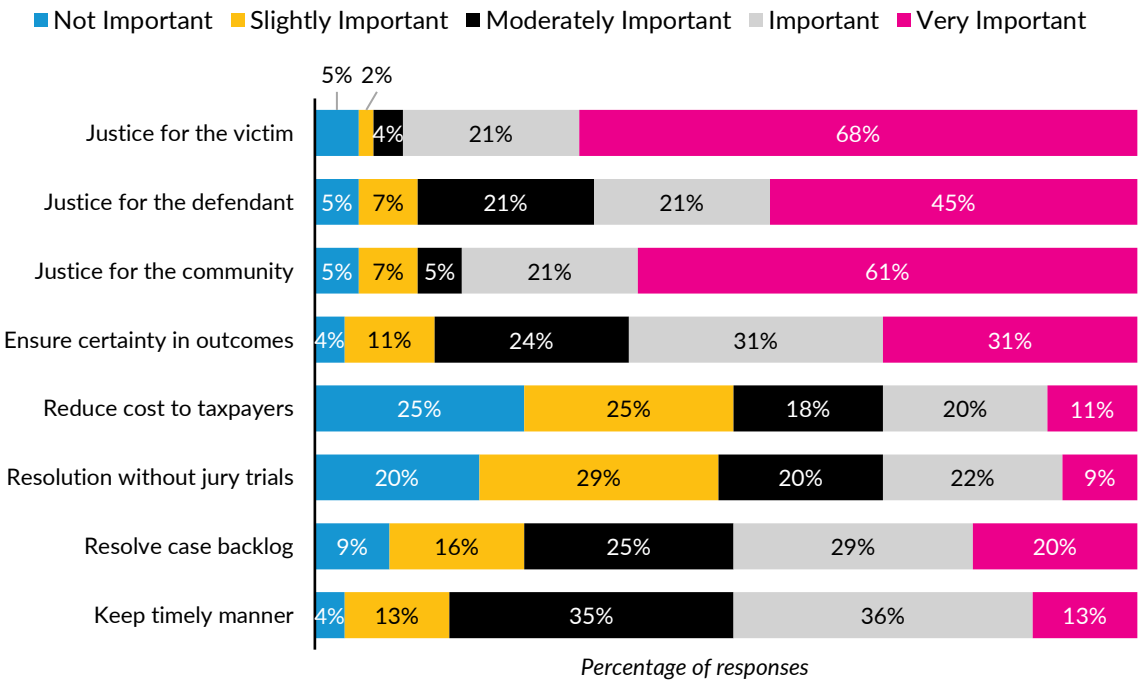
Three ADAs we interviewed said within the previous six months they had had a more hands-on supervisor who needed to approve almost all plea offers. After some strife, their unit's supervisor was replaced, and greater trust was placed in ADAs to use their discretion.

OVERARCHING GOALS THAT INFLUENCE PLEA PRACTICES AND PERFORMANCE ASSESSMENT

The most frequently cited goal of plea bargaining was providing justice to victims, defendants, and the community. Our survey asked ADAs about the goals of plea bargaining, regardless of whether they were regularly engaging in plea bargaining (figure 4). We offered several answers and asked respondents to rank the importance of each one on a scale of 1 (not important) to 5 (very important). Four of the goals concern efficiency: keeping cases proceeding efficiently, resolving case backlog, resolving a case without a jury trial, and reducing costs to taxpayers; the other four concern fairness and just outcomes.

FIGURE 4

How Important Are the Following Goals of Plea Bargaining?



URBAN INSTITUTE

Source: Urban Institute 2022 survey of Philadelphia assistant district attorneys.
Notes: Total of 56 responses for the first three options; total of 55 responses for the last five. Eight missing due to blank surveys.

Providing justice to the victim, community, and defendant were largely considered "very important" goals, though not at equal rates. Thirty-eight ADAs said providing justice for victims is a "very important" goal of plea bargaining, 34 said providing justice for the community was very important, and 25 said providing justice to the defendant is very important. Our interview findings mirror these survey findings about the goal of providing justice; three ADAs said plea bargaining is a fairer process than proceeding with a trial because it enables parties to share information and negotiate for a sentence that is more lenient and flexible to a person's circumstances than a trial.

Fewer respondents indicated that reducing costs to taxpayers, resolving case backlog, resolving cases without jury trials, and keeping a case proceeding on a timely manner are important goals. This may indicate that the ADAs we surveyed largely view plea bargaining as a way to ensure justice rather than save time. Still, very few indicated that case processing time is "not important." It should be noted that timeliness and backlog are closely related concepts, which may explain why these responses were so similar.

We also broke down responses by unit. The units with the most responses were the Special Investigations Unit and Conviction Integrity Unit (*n*=10), Homicide and Nonfatal Shootings (*n*=5), Major Trials (*n*=5), and Pretrial (*n*=5). In these units, the majority of respondents said they engage in plea bargaining, but their caseloads and approaches differ. Higher percentages of ADAs in the Major Trials and Pretrial Units responded that the goals concerning time efficiency (i.e., keeping the case proceeding in a timely manner and resolving case backlog) are either "important" or "very important" than the Homicide and Nonfatal Shootings and the Special Investigations and Conviction Integrity Units. The Major Trials Unit and Pretrial Unit had the highest percentage of ADAs responding that providing justice for the community was a "very important" goal of plea bargaining, and the Special Investigations and Conviction Integrity Units had the highest percentages of ADAs responding that providing justice for the defendant is a "very important" goal for plea bargaining. This matches the purpose of the Conviction Integrity Unit in particular, which handles exonerations.[32] Lastly, the Major Trials Unit had the highest percentage of ADAs saying providing justice to the victim is a "very important" goal of plea bargaining, followed by the Homicide and Nonfatal Shootings Unit.

There do not seem to be many official mechanisms for checking decisionmaking after a plea bargain is accepted. We asked in our survey whether there were official mechanisms for checking whether a prosecutor's plea offer was too lenient or too harsh after it had been accepted. Fewer than a quarter of ADAs indicated there were, though these responses differed by unit. For example, one direct check on ADAs in the Homicide and Nonfatal Shootings Unit is that their offers must be approved by the first assistant or by Krasner himself.

Of those who reported there were such checks, the majority (55 percent, *n*=6) said the check is the supervisor; 28 percent (*n*=3) said the check is the judge, who can reject pleas. One ADA (9 percent) said the checks come from the media and public. One (9 percent) added that people who submit Post-Conviction Review Act petitions and the parole board can check whether a plea was too harsh.

The DAO Data Lab has begun assessing adherence to some officewide policies. As with all these policies, there is no detailed information on how the DAO plans to monitor adherence or what accountability mechanisms are in place. Adding accountability mechanisms for following policy is uncommon in prosecutors' offices, though not unheard of.[33]

Despite this, the DAO Data Lab has begun releasing reports on the DAO's progress adhering to policies, which it appears to do at a relatively high level. One DAO Data Lab report shows how two supervision policies have impacted supervision rates and terms in Philadelphia:[34] about two-thirds of

negotiated felony pleas and three-quarters of negotiated misdemeanor pleas are within the range of the policy standards. To support future assessment, the 2022 memorandum "Supervision Policies Part III" specifies that "all employees of the DAO shall assist in data collection related to this policy to ensure that it is implemented and is effective, and to help assess its impact on mass supervision and racial disparities to the extent practicable."[35]

PROSECUTOR UNITS AND APPROACHES TO PLEA BARGAINING

In addition to the officewide policies described above, many ADAs said different units have different approaches to and cultures around plea bargaining. Although we could not assess whether those approaches support the DA's desired outcomes, the DAO DATA Lab recently released a report offering some insight. And in the next section, we reflect on how plea bargaining can achieve the aforementioned goal of providing justice to defendants.

Policies related to plea bargaining are set officewide, not by unit. All the policies within our review are officewide policies meant to standardize case decisionmaking across units, particularly for less serious offenses. Our partners at the DAO made it clear they made an intentional effort to make policies consistent across units rather than specific to different units. Though some unit supervisors said the policies did not align with their perspectives, they said they still complied with those policies.[36]

Generally, each unit has a unique approach to plea bargaining that is largely informed by its culture and goals. About 45 percent of ADAs we surveyed said there are unwritten norms specific to plea bargaining, and our interview findings mirror this. Interviewees reported that each DAO unit has its own culture and approach based on its historical practices and current supervisors. The following are examples of units' different approaches:

- The Juvenile Unit is known for having a more rehabilitative approach to case resolution, and its plea outcomes tend to focus more on limiting the impact of the criminal legal system on youth, as explained by ADAs in interviews. Our partners at the DAO explained that this was not always the approach and that the previous ethos for that unit was that it was a place for attorneys to practice their trial skills.
- The norm in the Gun Violence Task Force Unit is to offer probation or the opportunity for parole in exchange for a guilty plea on an offense that prohibits a person from possessing a gun in the future. For people with these prior convictions, subsequent firearm possession can result in more serious charges and sentences.

- The Homicide and Nonfatal Shootings Unit will often charge a homicide without specifying degree and then make a plea offer of third-degree murder accompanied by a sentence that is significantly less than mandatory life in prison, which is required for first-degree murder.

The Pretrial Unit has a unique approach to plea bargaining. Four interviewed ADAs said the only goal of the Pretrial Unit is to dispose of as many cases as it can through mitigated offers. They indicated that the Pretrial Unit has more experienced ADAs who exercise more discretion than those in other units. Interviewed ADAs also believed that pretrial offers will generally be the most lenient offers defendants will receive (although the case file review detailed later in this report produced contrary results). Our survey also found a perception that Pretrial Unit ADAs exercise much discretion to deviate downward from the sentencing guidelines.

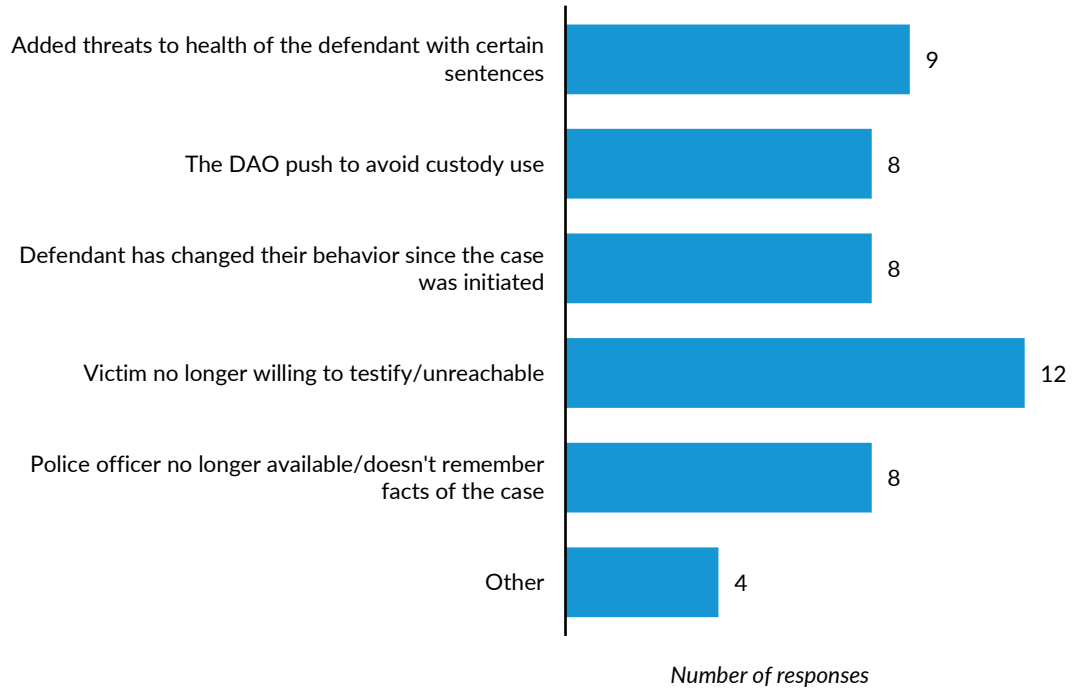
Conversely, four interviewed ADAs said the Municipal Court Unit is staffed by less experienced ADAs who do not deviate much with their offers for less serious misdemeanor cases. This finding came from ADAs who handled CP cases, as we did not interview ADAs from the Municipal Court Unit and they did not respond to the survey.

Moreover, as mentioned earlier, some units have more supervisory oversight of plea bargaining than others, and in these units, offers are fairly dependent on the supervisor's approach. For example, all offers in the Gun Violence Task Force Unit must be approved by a supervisor, and the Special Investigations Unit must have all plea offers approved by the DA when the defendant is a police officer.

Some ADAs, though not the majority, have offered more lenient plea offers since the start of the COVID-19 pandemic. Our survey found that, of those ADAs actively engaged in plea bargaining (*N*=31), 39 percent reported offering more lenient pleas since the start of the pandemic (*n*=12), 45 percent reported not changing their approach (*n*=14), and no one said they had offered harsher pleas. Among those who said they had changed their offers, the most common reason was that the victims were no longer willing to testify (figure 5). Respondents could choose more than one option, and another 18 percent said they changed their plea bargaining approaches to consider how certain sentences would add health risks for defendants (*n*=9).

FIGURE 5

For What Reasons Has the COVID-19 Pandemic Impacted Your Decisionmaking around Plea Offers?



URBAN INSTITUTE

Source: Urban Institute 2022 survey of Philadelphia assistant district attorneys.
Notes: DAO = Philadelphia District Attorney's Office. Total of 49 choices made by 15 assistant district attorneys. Two missing due to blank responses.

Although ADAs cited providing justice to the defendant as a major goal of plea bargaining, they said the plea bargaining process can undermine this goal. To assess whether the DAO's plea bargaining practices were providing justice to defendants, we surveyed ADAs about how often defendants accept pleas when they are innocent. We made this question vague so the ADAs could reflect on either their own errors or the errors of the system. Almost half of those who responded said defendants "sometimes" or "often" accept pleas when they are innocent (*n*=22). Only six said this "never" happens. These numbers indicate that most ADAs thought innocent people are accepting convictions, which leads to miscarriages of justice.[37]

Defense providers and one person we interviewed who had accepted a plea voiced similar issues. Defenders said there are numerous time pressures and custodial pressures on people going through the system and that they often accept pleas that are attractive to quickly complete their case processing, have certainty of outcomes, and get out of jail as soon as possible if they are being held

pretrial. One person who had accepted a plea said they were innocent of the crime they were accused of but that they felt pressured to accept a plea that had been generous.

Some responded that the process of plea bargaining can undermine fairness when the pressure of a criminal case leads to wrongful guilty pleas, responses which reflect introspection on the part of Philadelphia ADAs. This phenomenon is not specific to Philadelphia, as reported in a database tracking exonerations, and it may reflect how the criminal legal system functions at large and the ways pleas may be incentivized.[38]

Trends in Offers and Outcomes

Research questions	Methods
4. What, if any, administrative data on plea offers are available?	Administrative data
5. What are the basic trends in plea outcomes?	Case file review
6. How do plea offers and outcomes vary by a defendant's race/ethnicity and other demographic characteristics?	Interviews

DATA ON PLEA OFFERS

Administrative data on plea offers are limited. Much of the information available on plea offers is in case files but not administrative court data. Some information is only recorded for cases in CP court.

Similar to data challenges nationally, Philadelphia's data on plea offers are limited. We looked to several data sources to learn more about plea offer and outcome trends. First, we reviewed the Philadelphia DAO DATA Lab's outcomes reports, from its public data dashboard.[39] At the time of our review, that dashboard combined all guilty pleas and nolo contendere/no contest into one category; it has since separated them into two data labels. For our review of plea bargaining, we wanted to focus exclusively on negotiated guilty pleas, so we could not rely on the dashboard for trends.

Electronic administrative court data in Philadelphia include information on whether a case was disposed by a negotiated guilty plea and the final sentence, but not on the final offer,[40] whether offers were made for cases that were not disposed by plea, or any information about the plea offers made. Although the administrative data include some information on whether a case was disposed through a negotiated guilty plea and what the sentence was, it lacks information on the stipulated facts for each offer made. Additionally, in working with the court, we identified some discrepancies where case dispositions were showing as negotiated guilty pleas in the administrative data but were discovered not to be upon review of cases files (3.5 percent of case files reviewed). Still, the administrative data

provide information on the demographics of people who accept negotiated pleas, the outcomes and sentences, and the length of case processing. These data limitations are common in court data across the nation.

To learn more about the process of plea bargaining, we looked for information only available through a manual review of **physical case files**. This review was used to construct a database with additional details on a limited number of cases. Among other information, we received an anonymized identifier for the ADA assigned to the case, the defense counsel type, detention or release types at initial review and at plea acceptance, and whether the case was consolidated with other open cases. We also received a binary indicator of the presence of physical evidence, which is important information for crafting a plea offer and rarely available in administrative data. Additionally, we received a metric tracking the number of days between plea acceptance and sentencing. We also collected information on probation and incarceration outcomes for the accepted plea offers and whether diversion was part of accepted pleas. Lastly, we received the charge severity and probation and incarceration lengths in the Pretrial Unit offer, which is the initial offer on a case for those in the CP court. This allows for a comparison of charge and sentence bargaining over time. Our case file review focused on negotiated guilty pleas, and we sampled 115 cases. In summary, as part of the case file review, we collected the following data elements:

- ADA assigned (anonymized)
- defense counsel type
- pretrial status at initial review
- pretrial status at plea acceptance
- consolidated with another case
- physical evidence present
- offense gravity score (only available for CP court cases)
- prior record score (only available for CP court cases)
- diversion offered
- sentencing guidelines range (minimum and maximum) (only available for CP court cases)
- Pretrial Unit offer (sentence type and length)
- sentencing outcome

- number of days from plea acceptance to sentencing

Some information is limited to cases in the Court of Common Pleas, where the majority of plea bargaining occurs. Felony cases are pleaded in CP court, where ADAs have more discretion to bargain. The MC only holds preliminary hearings for felonies and does not start the plea bargaining process for those offenses. Misdemeanors are generally disposed in MC via guilty pleas or diversion offers and can also be withdrawn for a variety of reasons. When a guilty plea occurs in MC, sentencing guidelines are not used. Overall, several unwritten factors did not lend well to our review of MC case files. Thus, to learn more about the extent of plea bargaining in Philadelphia, we looked to CP court files, which include more robust information because they include the offense gravity score, prior record score, and sentencing guidelines, which ADAs who handled CP cases stated were all part of their calculation when crafting a plea offer. Lastly, for CP cases included in the case file review, we received the charge severity and probation and incarceration lengths of pretrial offers, which are the initial offers on felony cases being sent to CP court. We also received the same details for accepted plea offers. This allowed for a comparison of charge and sentence bargaining over time.

From our interviews, we learned that ADAs working on MC cases typically do not use guidelines to structure plea bargains, which explains why we did not have offense gravity scores and prior record scores in the case files for those cases.

Data can be limited because of inconsistent data entry practices. We asked some of the ADAs we interviewed whether there is a way to track plea offers and information around plea negotiations; five said plea offers are often extended and tracked in emails with the defense attorneys, though one added that sometimes plea offers are made over the phone and thus not tracked as frequently. Three said they often track plea offers in their case management system, but they added that they do not know if this is common, and one said most do not track them. Therefore, data on plea bargains are not captured in a consistent way across all ADAs and cases.

TRENDS IN PLEA OUTCOMES

We limited our analysis of administrative court data to cases resulting in guilty outcomes, excluding all other resolutions, including diversion, withdrawals, and dismissals. We focused on cases disposed from 2018 through December 2020. (See our Methodology section for more information on other data processing decisionmaking.)

We looked at the frequency of negotiated guilty plea outcomes in Philadelphia. We found that about two-thirds of convictions are disposed by negotiated guilty plea (69 percent of cases were disposed

this way in 2018 and 2019) (table 4). Across cases disposed by negotiated guilty plea in 2018 and 2019, 60 percent concluded in CP court (58 percent in 2020), where virtually all cases are felony cases.

TABLE 4

Method of Final Disposition of Cases Ending in an Outcome of Guilty or No Contest

	Cases disposed in 2018 and 2019		Cases disposed in 2020	
	MC (*n* = 9,349)	**CP** (*n* = 13,786)	**MC** (*n* = 1,214)	**CP** (*n* = 2,164)
Negotiated guilty plea	6,483 (69%)	9,571(69%)	966 (80%)	1,356 (63%)
Non-negotiated guilty plea	248 (3%)	2,458 (18%)	46 (4%)	580 (27%)
Guilty plea—unknown	102 (1%)	17 (0%)	9 (1%)	2 (0%)
No contest	33 (0%)	274 (2%)	0 (0%)	21 (1%)
Guilty by trial	2,482 (27%)	1,466 (11%)	193 (16%)	205 (9%)
Guilty—mentally ill	1 (0%)	0 (0%)	0 (0%)	0 (0%)

Source: Philadelphia First Judicial District administrative court data provided through the Institute for State and Local Governance.
Notes: MC = Municipal Court; CP = Court of Common Pleas.

In conversations with the DAO, we learned that the lack of sealed and expunged cases in the data we received at the time of data transfer to ISLG resulted in slightly fewer withdrawn, nolle prosequi, and dismissed cases than one might expect. This might owe to Clean Slate legislation that automatically seals cases in Pennsylvania after 30 days.[41] For this reason, we are only examining cases resulting in a final outcome of guilty. However, DAO Public Data Dashboard data show that dismissed, withdrawn, or diverted cases constitute the majority of cases, and this proportion grew from 57 percent in 2018 to 73 percent in 2021.[42]

Before looking at the characteristics and trends in plea outcomes, it is important to understand how sentencing works in Philadelphia. Sentences in Philadelphia are set as ranges with minimums and maximums rather than as discrete numbers of months, and in some cases, people may have custodial outcomes in their maximum sentences and not in their minimum sentences. Further, most custodial sentences include a parole term. Pennsylvania's sentence structures include a maximum sentence that is at least twice the length of the minimum sentence. A person can be paroled early but must spend the remainder of their sentence on community supervision until they reach their maximum sentence length.

We analyzed characteristics of negotiated guilty plea convictions in the administrative data. Table 5 shows the number and share of negotiated plea cases by the sentence imposed and case pendency measured as the average number of days from initial filing to disposition. Unlike MC cases, most cases in CP court resulted in an incarceration sentence (55 percent in 2018 and 2019). Most MC cases we

examined resulted in a probation-only outcome, but 19 percent (in 2018 and 2019) resulted in incarceration. We also found that, across both courts, probation is almost always a component of sentencing in Philadelphia, either with or without a period of incarceration: 74 percent of MC cases and 89 percent of CP cases in 2018 and 2019 included probation.

We also looked at probation lengths. As explained above, sentences are set as ranges with minimum and maximum sentences rather than discrete numbers of months. Probation lengths in Philadelphia can be long.[43] Krasner's 2019 mass supervision policy states that the officewide average for felonies should be 18 months or less, with a ceiling of 3 years on each case (except where required by law) and the officewide average for misdemeanors should be around 6 months or less, with a ceiling of 1 year. However, across cases disposed via negotiated guilty plea in 2019 and 2020 in CP court (where most felonies cases are concluded), we observed average maximum probation lengths of about 29 months.

Lastly, we looked at case pendency. The average time from filing to disposition is over 6 months for MC cases and over 8 months for CP cases. Case pendency was even longer for cases disposed during the COVID-19 pandemic (table 5).

TABLE 5

Select Characteristics of Negotiated Guilty Pleas in Philadelphia, by Court Type

	Cases disposed in 2018 and 2019		Cases disposed in 2020	
	MC (*n* = 6,483)	CP (*n* = 9,571)	MC (*n* = 966)	CP (*n* = 1,356)
Case characteristics				
Sentenced to any incarceration	1,231 (19%)	5,306 (55%)	108 (11%)	756 (56%)
Sentenced to probation only	3,960 (61%)	4,066 (43%)	436 (45%)	535 (40%)
Sentences to probation (with or without incarceration)	4,770 (74%)	8,486 (89%)	501 (52%)	1,513 (85%)
Outcome of no further penalty	1,166 (18%)	138 (1%)	347 (36%)	10 (1%)
No sentence type listed	70 (1%)	52 (1%)	74 (8%)	46 (3%)
Probation length minimum in months	0.0	0.9	0.0	0.7
Probation length maximum in months	3.5	32.6	5.0	29.2
Average days from filing to disposition	181	241	224	287

Source: Philadelphia First Judicial District administrative court data provided through the Institute for State and Local Governance.

Notes: MC = Municipal Court; CP = Court of Common Pleas.

We also explored differences in case pendency based on counsel type. Looking at cases disposed by negotiated guilty plea, we found that cases that have a private attorney at some point have longer average case pendency (table 6).

TABLE 6

Average Case Pendency (in Days) in Philadelphia, by Counsel Type for Negotiated Guilty Pleas

	Cases disposed of in 2018 and 2019		Cases disposed of in 2020	
	MC (*n* = 6,483)	CP (n = 9,571)	MC (n = 966)	CP (n = 1,356)
Private counsel at any point in case	233	331	240	392
No private counsel ever during case	166	197	221	242

Source: Philadelphia First Judicial District administrative court data provided through the Institute for State and Local Governance.
Notes: MC = Municipal Court; CP = Court of Common Pleas.

We examined case characteristics, including sentence outcomes and pretrial detention, in more detail in our case file review sample. Similar to what we observed in the administrative data, more than 60 percent of cases in our case file review sample (including cases disposed in 2016 and 2019) resulted in probation sentences, and about 30 percent resulted in incarceration sentences with probation tails. Only 6 percent of cases in the case file review resulted in incarceration-only outcomes (table 7). Fewer than 5 percent received some other outcome (e.g., community service). The large percentage of probation outcomes observed in the administrative data and the case file review sample is emblematic of the mass supervision in Philadelphia.

Similar to the administrative data, the average length of probation for probation-only outcomes in the case file review sample was long, with an average maximum length of 19 months (table 7). Looking at only cases disposed in 2019, we observed a length of 17 months with a maximum of 60 months. The average length for a probation tail observed in the case file review including years 2016 and 2019 was 30 months and the maximum was 120 months.[44] This means that at least one person was sentenced to a 10-year term of community supervision to begin after a period of incarceration. Looking just at 2019, the average went down some to 20 months and the maximum was cut almost in half to 72 months (6 years).

As described above, every incarceration sentence in Philadelphia has a minimum and maximum term. The average minimum and maximum incarceration lengths in the case file review (including cases disposed of in 2016 and 2019) for people who received probation tails were 13 and 29 months, respectively. For people who only received incarceration sentences, the average incarceration minimum was 43 months and the average maximum was 87 months.

TABLE 7

Case Characteristics of the Philadelphia Case File Review Sample

	MC (*n* = 24)	CP (*n* = 91)	Total (*N*=115)
Case characteristics			
Sentence to incarceration only	0 (0%)	7 (8%)	7 (6%)
Sentenced to incarceration with a probation tail	2 (8%)	32 (35%)	34 (30%)
Sentenced to probation only	19 (79%)	51 (56%)	70 (61%)
Incarceration length minimum for sentence of incarceration only	N/A	43.3 months	43.2 months
Incarceration length maximum for sentence of incarceration only	N/A	86.5 months	86.5 months
Incarceration length minimum for sentence of incarceration and probation tail	1.6 months	14.1 months	13.3 months
Incarceration length maximum for sentence of incarceration and probation tail	3.1 months	30.2 months	28.5 months
Probation length minimum for sentence of incarceration and probation tail	0.0 months	2.0 months	1.9 months
Probation length maximum for sentence of incarceration and probation tail	0.0 months	32.0 months	30.0 months
Probation length minimum for sentence of probation only	0.0 months	0.7 months	0.5 months
Probation length maximum for sentence of probation only	8.2 months	23.1 months	19.0 months

Source: Case file review sample of Philadelphia District Attorney's Office case files provided by the Philadelphia District Attorney's Office.

Notes: MC = Municipal Court; CP = Court of Common Pleas.

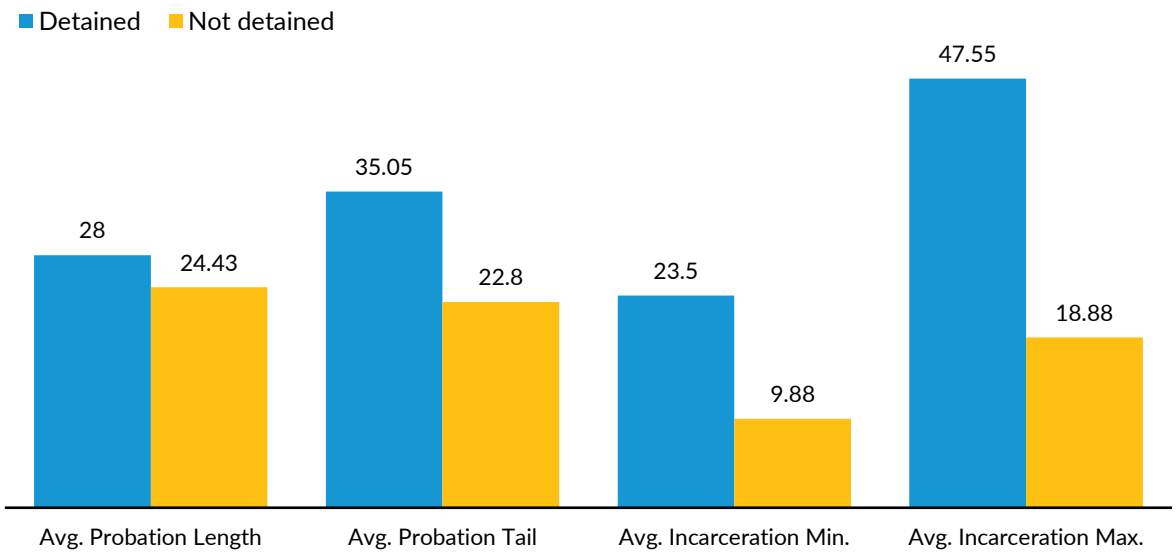
People are detained pretrial for a variety of reasons, such as probation/parole violations, serving another sentence, or because of a detainer or hold for another jurisdiction. Our case file review sample included information on whether people were detained pretrial, but not why they were detained. About 40 percent of our sample (45 of 115 cases) with negotiated guilty pleas were detained at both initial filing and plea acceptance, and almost 29 percent (33 out of 115 cases total) were never detained. Defendants detained at plea acceptance had higher average probation lengths and probation tails to incarceration (figure 6). Similarly, detained defendants' average minimum and maximum incarceration lengths were double those of people who were not detained. Other differences between people detained and those released at plea acceptance could be contributing to these outcomes; for example, half as many people detained at plea acceptance have prior record scores of 0 than those not detained, and offense gravity scores are about 1 point higher on average for those detained at plea acceptance than those not detained. One possible contributing factor to these differences is that people held in custody pretrial are likely to be charged with committing more serious crimes—leading to the pretrial detention.

We also sought to understand how people's offense gravity scores and prior record scores can impact outcomes in CP cases. We found that, for probation outcomes, offense gravity scores of 2, 3, and 5 had similar average probation lengths, but only two cases had scores of 4, so those averages skewed lower. Prior record scores range from 0 to 5, above 6 (also known as RFEL), and above 9 (also known as REVOC). Because we had few observations for scores of 1, 2, and 4, we grouped together scores from 0 to 2 and 3 to 5. Generally, the higher the prior record score, the higher the average probation length. We cannot report on outcomes for people with RFEL and REVOC scores because there were too few observations with those scores.

For incarceration outcomes in CP cases, the highest offense gravity score resulted in an average minimum and maximum incarceration sentence over three times larger than the lower offense gravity scores. Further, the higher prior record scores were related to longer average incarceration minimums and maximums.

FIGURE 6

Average Probation, Probation Tail, and Incarceration Minimum/Maximum among People Detained Pretrial and Those Not Detained Pretrial in Philadelphia (in Months)



URBAN INSTITUTE

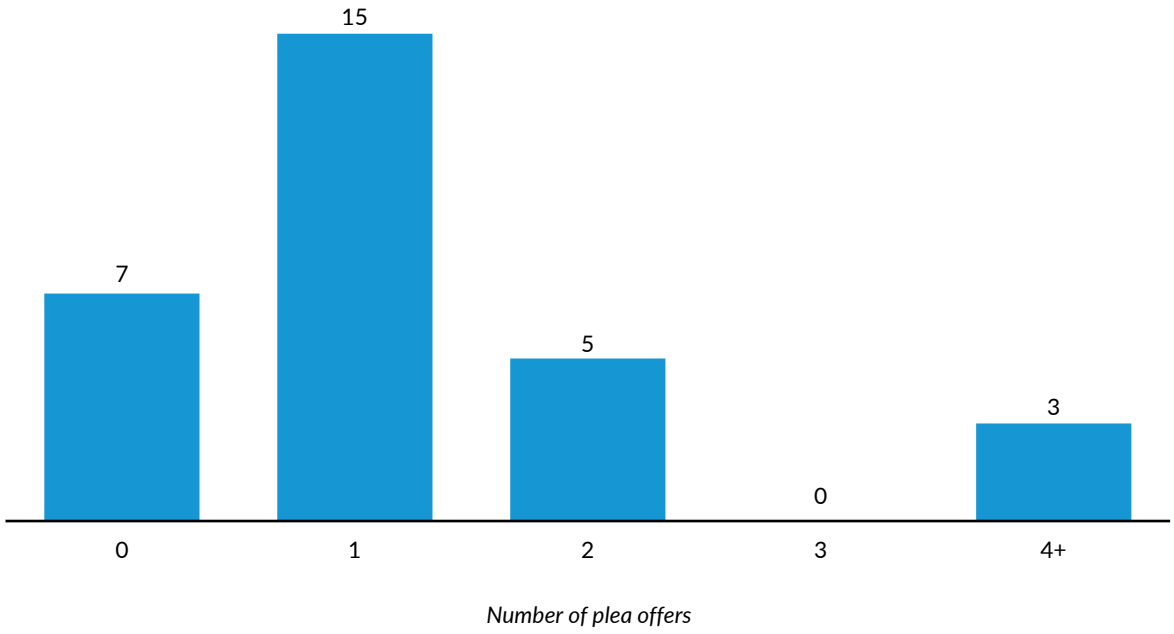
Source: Case file review sample of Philadelphia District Attorney's Office case files provided by the Philadelphia District Attorney's Office.

Our case file review allowed for an analysis of changes to plea offers over time. We were also able to examine changes in lead charges from pretrial offers to final charges for observations in the case file

review that were disposed in CP court.[45] Only about one-third of pretrial offers were the same as the accepted pleas; for the majority of cases, plea offers at acceptance differed from the initial offers. This generally follows what we learned in our ADA survey; most ADAs said another plea offer is normally extended after the pretrial offer, though about 23 percent said the pretrial offer is the only offer on a case (figure 7).

FIGURE 7

After a Case Leaves the Smart Room, How Many Pleas on Average Are Offered?



URBAN INSTITUTE

Source: Urban Institute 2022 survey of Philadelphia assistant district attorneys.
Notes: Total of 30 responses. One missing due to blank survey. The Smart Room is where the first plea offer is conveyed for felony cases in the Philadelphia Court of Common Pleas.

We explored how the grade severity[46] (e.g., felony of the first degree) changed between the pretrial offer and final lead charge across cases in the case file review. We found that the grade severity stayed the same for 56 out of 80 cases (70 percent), and of those 56 cases, the statute also stayed the same in 33 cases. The grade severity decreased from pretrial offer to final lead charge across a quarter of observations (20 out of 80 cases). Of cases that declined in severity, 14 were reduced from a felony to a misdemeanor. Surprisingly, we found that grade severity increased across four observations, including one that went from a misdemeanor to a felony. This may owe to the cases strengthening, perhaps because of changes in the evidence and witness availability.

We also examined how sentencing offers (incarceration and probation periods) changed between pretrial offers and final lead charges across cases. We found that sentencing offers stayed the same in a plurality of observations (*n*=37 of 79 cases, 47 percent) (table 8). Across the 26 cases in which the maximum incarceration periods decreased, 14 went from some maximum incarceration period to none. Across the 23 cases in which the minimum incarceration periods decreased, 13 went from some minimum incarceration period to none. Five of the 25 cases in which probation length decreased went from some probation period to none. In 6 percent of observations, we observed increases to incarceration period or increases to probation period with no change to incarceration period.

TABLE 8

How Accepted Plea Offers Differed from Pretrial Plea Offers in Philadelphia Case Files

	Frequency	Percentage
Minimum Incarceration Length and Probation Length		
No change to sentence	37	47%
No change to incarceration period, shorter probation period	12	15%
No changes to incarceration period, longer probation period	1	1%
Shorter incarceration period, no change to probation period	5	6%
Shorter incarceration period, shorter probation period	10	13%
Shorter incarceration period, longer probation period	8	10%
Longer incarceration period, shorter probation period	2	3%
Longer maximum incarceration period, no change to minimum incarceration period or probation period	1	1%
Shorter maximum incarceration period, no change to minimum incarceration period or probation period	2	3%
Longer maximum incarceration period, longer minimum incarceration period, no change to probation period	1	1%
Total number of cases	79	100%

Source: Case file review sample of Philadelphia District Attorney's Office case files provided by the Philadelphia District Attorney's Office.

We explored differences in case characteristics and outcomes between cases with negotiated guilty pleas and all other cases resulting in guilty outcomes in the administrative data. In MC cases, we found few notable differences in case outcomes between those with negotiated guilty pleas and those with all other guilty and no-contest outcomes. One difference is longer average case pendency from initial filing to disposition for cases that did not have negotiated guilty pleas. We also noticed a difference in probation-only outcomes. In the 2018—19 administrative data, a smaller percentage of cases in MC resulted in probation and probation-only outcomes across cases disposed by negotiated guilty plea compared with all other guilty outcomes. This may owe to the larger percentage of cases resulting in outcomes of no further penalty across cases disposed by negotiated guilty plea (18 percent compared with 9 percent).

TABLE 9

Case Characteristics for Negotiated Guilty Pleas and Other Guilty Outcomes in Philadelphia Municipal Court

	Cases Disposed in 2018 and 2019		Cases Disposed of in 2020	
	Negotiated guilty pleas (*n* = 6,483)	Other guilty outcomes (*n* = 2,866)	Negotiated guilty pleas (*n* = 966)	Other guilty outcomes (*n* = 248)
Case characteristics				
Sentenced to any incarceration	1,231 (19%)	662 (23%)	108 (11%)	38 (15%)
Sentenced to probation only	3,960 (61%)	1,883 (66%)	436 (45%)	109 (44%)
Sentences to probation (with or without incarceration)	4,770 (74%)	2,348 (82%)	501 (52%)	127 (51%)
Outcome of no further penalty	1,166 (18%)	265 (9%)	347 (36%)	61 (25%)
No sentence type listed	70 (1%)	56 (2%)	74 (8%)	40(16%)
Probation length minimum in months	0.0	0.0	0.0	0.1
Probation length maximum in months	3.5	2.0	5.0	3.6
Average days from filing to disposition	181	240	224	276

Source: Philadelphia First Judicial District administrative court data provided through the Institute for State and Local Governance.

In CP Court, where fewer cases (less than 2 percent) result in an outcome of no further penalty, the trends are reversed related to probation-only outcomes, and a larger percentage of cases result in probation-only outcomes across cases disposed by negotiated guilty plea compared with all other guilty outcomes. We also observe shorter average maximum probation lengths for cases with negotiated guilty pleas. When considering the implications of this difference, it is important to keep in mind that in these data, we could not observe the probability that a case would have been withdrawn, dismissed, nolle prossed, or acquitted if a person had chosen to go to trial. We also observe shorter average periods from filing to disposition for cases with negotiated guilty pleas.

TABLE 10

Case Characteristics for Negotiated Guilty Pleas and Other Guilty Outcomes in Philadelphia Court of Common Pleas

	Cases Disposed in 2018 and 2019		Cases Disposed in 2020	
	Negotiated guilty pleas (*n* = 9,571)	Other guilty outcomes (*n* = 4,215)	Negotiated guilty pleas (*n* = 1,356)	Other guilty outcomes (*n* = 808)
Case characteristics				
Sentenced to any incarceration	5,306 (55%)	2,961 (70%)	756 (56%)	444 (55%)
Sentenced to probation only	4,066 (43%)	1,006 (24%)	535 (40%)	142 (18%)
Sentences to probation (with or without incarceration)	8,486 (89%)	3,147 (75%)	1,513 (85%)	482 (60%)
Outcome of no further penalty	138 (1%)	101 (2%)	10 (1%)	11 (1%)
No sentence type listed	52 (1%)	146 (4%)	46 (3%)	211 (26%)
Probation length minimum in months	0.9	1.6	0.7	1.5
Probation length maximum in months	32.6	45.6	29.2	40.4
Average days from filing to disposition	241	334	287	322

Source: Philadelphia First Judicial District administrative court data provided through the Institute for State and Local Governance.

VARIATION IN PLEA OFFERS AND OUTCOMES BY DEMOGRAPHIC CHARACTERISTICS

Among cases disposed from 2018 to 2020, age at initial disposition ranged from 16 to 91 with an average age of 35, which is similar to the average age of a Philadelphia residents.[47] The race and gender composition of people with cases resulting in outcome of guilty or no contest, however, was dissimilar in some respects to the general population in Philadelphia. Whereas 53 percent of Philadelphians are female, only about 13 percent of the person-case population was female. Over half (60 percent) of people with cases disposed from 2018 to 2020 resulting in outcomes of guilty or no contest were Black, whereas 44 percent of people in the general Philadelphian population are Black (table 11). Ethnicity was missing in over half of the observations, so we do not report on ethnicity separately and are combining Latinx and white populations; roughly 16 percent of people in Philadelphia County are Latinx. Court staff shared that there is variation in how race and ethnicity data are recorded and limited validation of these variables, which results in a low number of observations with ethnicity recorded and may also account for low numbers of people reported to be biracial.

TABLE 11

Sex and Race of People in Philadelphia County Compared with People with Cases in Philadelphia's Municipal Court and Court of Common Pleas

	Philadelphia County	Municipal Court	Court of Common Pleas
Sex			
Female	53%	17%	10%
Race			
American Indian/Alaskan Native	0%	0%	0%
Asian	8%	1%	1%
Biracial	3%	0%	0%
Black	44%	53%	65%
White	44%	46%	35%

Sources: "Quick Facts: Philadelphia, County Pennsylvania," US Census Bureau, https://www.census.gov/quickfacts/philadelphiacountypennsylvania, and Philadelphia First Judicial District administrative court data provided through the Institute for State and Local Governance.

In the administrative data, there were no notable differences in age between people who accepted negotiated guilty pleas and other people with cases resulting in dispositions of guilty or no contest. We found some notable differences in people's likelihood of accepting a plea offer across sex and race (table 12). Before the pandemic, more males than females accepted negotiated guilty pleas in MC, whereas the rate was about the same in CP court. During the pandemic, rates became closer in MC. Before the pandemic, more people who are Black accepted pleas in MC than those who are Asian or white, whereas the opposite is true in CP. After the pandemic, trends reversed and a larger share of white people than Black people accepted pleas in MC.

TABLE 12

Percentage of Guilty Outcomes in Philadelphia Resulting from Negotiated Guilty Pleas

	Cases disposed in 2018 and 2019		Cases disposed in 2020	
	Municipal Court	Court of Common Pleas	Municipal Court	Court of Common Pleas
Sex				
Male	71	69	80	62
Female	62	71	75	64
Race				
Asian	67	73	Suppressed	Suppressed
Black	71	67	78	61
White	68	73	82	66

Source: Philadelphia First Judicial District administrative court data provided through the Institute for State and Local Governance.

Notes: Information for people who are American Indian/Alaskan Native or biracial or Asian in 2020 is not being reported due to low numbers of cases.

In our case file review, we looked at trends in incarceration outcomes. We examined differences in outcomes by age across the case file review sample. Defendants who only received probation outcomes were generally younger than those who only received incarceration or both incarceration and probation tails, but differences were small. Those with neither probation nor incarceration outcomes were slightly older on average than those with any other outcome.

Using administrative data, we found that in CP cases, a larger share of males who accepted negotiated guilty pleas had incarceration outcomes than women (table 12). In both MC and CP cases, slightly smaller shares of white and Asian defendants had custodial outcomes than Black defendants (table 13). As a reminder, white defendants include white and Latinx defendants because of limitations of the ethnicity variable. We did not run analysis to control for any other differences in case characteristics that may contribute to the differences based on gender or race. The administrative data are limited regarding what we can assess about how defendants and case characteristics within negotiated plea outcomes differ, so we used our case file review to learn more. For instance, no data are available for prior record score or sentencing guideline ranges.

TABLE 13

Percentage of People with Negotiated Guilty Pleas Sentenced to Custodial Outcomes

	Cases disposed in 2018 and 2019		Cases disposed in 2020	
	Municipal Court	Court of Common Pleas	Municipal Court	Court of Common Pleas
Sex				
Male	19%	58%	12%	61%
Female	22%	40%	14%	38%
Race				
Asian	17%	52%	Suppressed	Suppressed
Black	20%	57%	12%	60%
White	19%	54%	12%	57%

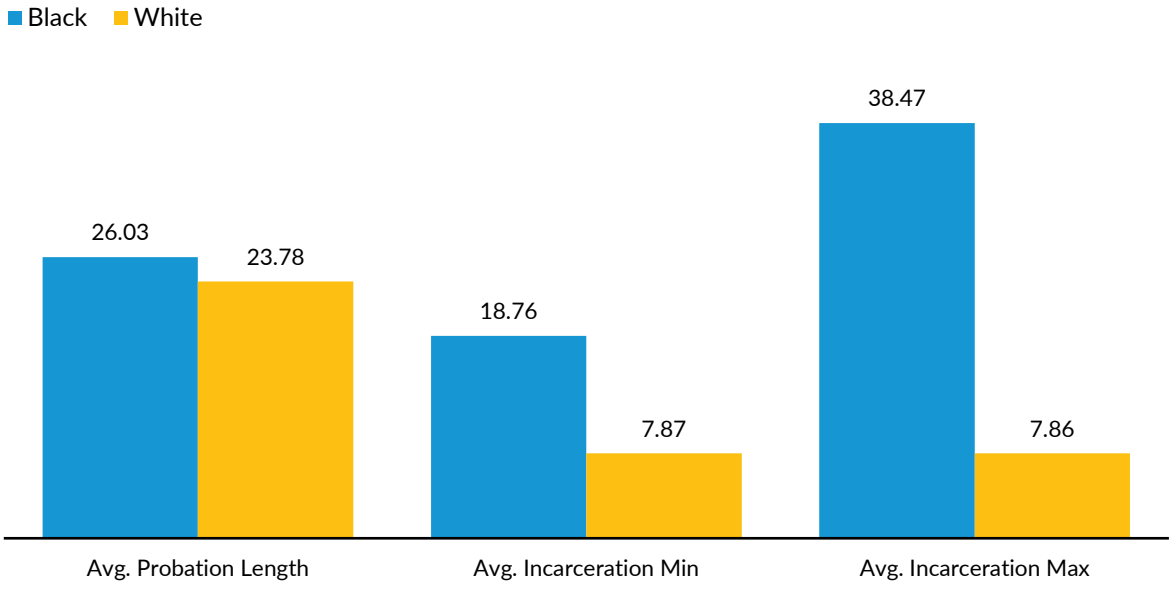
Source: Philadelphia First Judicial District administrative court data provided through the Institute for State and Local Governance.
Notes: Information for people that are American Indian/Alaskan Native or Bi-racial or Asian in 2020 is not being reported due to low numbers of cases.

In our case file review sample, a larger percentage of Black defendants had incarceration-only or probation-only outcomes than white defendants. About 7 percent of all white defendants in our sample had neither probation nor incarceration outcomes, compared with only 3 percent of Black defendants. A slightly larger percentage of white defendants received incarceration with a probation tail. We did not run analysis to control for any other differences that may contribute to this disparity.

Black defendants in the case file review sample received longer probation periods and probation tails on average than white defendants. The lengths for those with only incarceration outcomes are too identifying to report, as only one white defendant received only incarceration. However, of those with both incarceration and probation outcomes, the average incarceration minimum and maximum for Black defendants more than twice those for white defendants (figure 8). We did not run analysis to control for any other differences that may contribute to this disparity.

FIGURE 8

Average Probation, Probation Tail, and Incarceration Minimums and Maximums in Philadelphia by Race (in Months)



URBAN INSTITUTE

Source: Case file review sample of Philadelphia District Attorney's Office case files provided by the Philadelphia District Attorney's Office.

We also identified differences in the offense gravity and prior record scores and the charge severity between white and Black defendants in the case file review; Black defendants had higher scores and more severe charges on average. These differences impact case outcomes, resulting in harsher sentences. Importantly, we did not control for case characteristics when looking at differences in case outcomes by race.

Though our findings across the administrative data and case files showed that Black defendants had worse plea outcomes, only about 55 percent of ADAs (*n*=26) reported in the survey that people of

color receive harsher plea offers. However, nearly all ADAs (96 percent, *n*=43) reported that people of color do not receive more lenient plea offers.

Though our findings from Philadelphia are exploratory, they are consistent with existing research on disparities across the criminal legal system.[48] Research finds disparities reflective of structural racism in legislation, policing behaviors, sentencing guidelines, and prosecutors' decisionmaking, and these compound disparities that are later observed in court data.

Decisionmaking and Perceptions of Key Actors

Research Questions	Methods
7. If racial disparities exist in plea bargaining, what factors and circumstances of the defendant, their case, or related external issues contribute to these disparities?	ADA Survey ADA Interviews Defense Interviews Interviews with people who accepted pleas
8. How is an initial plea offer made and what types of factors influence the type of offer?	
9. How do prosecutors make decisions about changes to plea offers throughout the plea bargaining process?	
10. What are the perceptions of defense providers and defendants regarding plea negotiations and outcomes?	

FACTORS AND CIRCUMSTANCES THAT CONTRIBUTE TO RACIAL DISPARITIES

The majority of ADAs in our study believe racial disparities exist in the criminal legal system, and many believe the disparities in plea offers and outcomes relate to prior criminal records, which is largely impacted by policing practices.

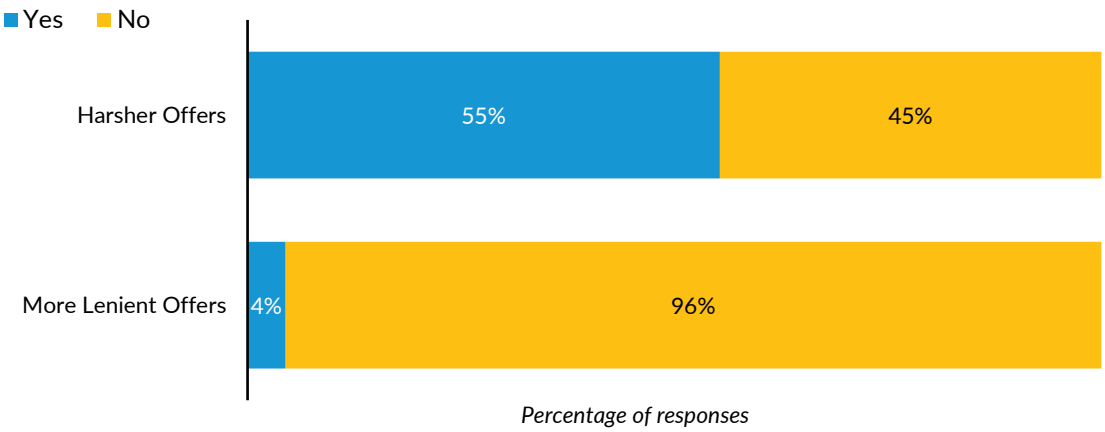
Most ADAs believe racial disparities are part of the criminal legal system and plea offers and outcomes. Over 80 percent of the 47 ADAs who responded to the survey question agreed that structural racism is present in the criminal legal system in Philadelphia and that it can impact plea offers. The same share indicated that people of color experience cumulative disadvantages. We asked the same question in our ADA interviews. Seven of the nine who answered this question believe structural racism is a problem, with one adding that defendants are now being treated too leniently. Others who agreed that structural racism is present in Philadelphia said it is most prevalent in policing practices. The other two ADAs we interviewed could not say whether structural racism was a problem but then added that racism affects both defense and prosecution. Some ADAs we interviewed added that they know there are racial disparities but can only tell at the aggregate and not the individual level. In a separate question about whether they see disparities in plea offers and outcomes, three interviewed

ADAs said they rarely even know the defendant's race until the day of their first court hearing and that this made them "race neutral."

In our survey, about 55 percent of ADAs (*n*=26) said people of color receive harsher plea offers and 45 percent said they do not. Only 4 percent of ADAs (*n*=2) indicated people of color receive more lenient offers (figure 9). These two questions were framed for ADAs to reflect on the racial differences in plea offers in Philadelphia generally, not whether they personally make harsher or more lenient offers to people of color.

FIGURE 9

Do People of Color Receive Harsher Offers? More Lenient Offers?



URBAN INSTITUTE

Source: Urban 2022 survey of Philadelphia assistant district attorneys.
Notes: Forty-seven total responses; 7 missing due to blank responses.

Several ADAs believe there are racial disparities in plea offers because of policing practices, prior records, and how implicit bias can impact the wide discretion of ADAs. Our survey asked ADAs about factors contributing to racial disparities in plea offers; we also asked this question to some interviewees who said those disparities exist. Many said disparities exist in prior record scores and criminal histories, both of which impact how they craft plea offers. This is partly reflective of the system Philadelphia ADAs work within, since plea offers in more serious cases are based on the framework of the Pennsylvania Sentencing Guidelines. As discussed earlier, these guidelines use prior record scores to identify sentencing ranges. Only arrests resulting in convictions are used to calculate prior record scores, but an ADA can still see and consider the number and types of arrests that do not result in convictions in their decisionmaking. Seven ADAs also reflected in interviews that the Pennsylvania

Sentencing Guidelines enable racial disparities to arise because they do not consider how structural racism and discrimination can impact aspects like prior criminal record.

Our survey asked ADAs whether structural racism in Philadelphia can impact a plea offer; of the 47 who responded, 81 percent (*n*=38) said yes. We pressed those 38 in an open-field question to explain why they believed structural racism can impact a plea offer. Several ADAs shared that areas that are overpoliced contribute to disparities, as those who are prosecuted reflect those who are arrested. Others added that it's all cyclical, and those with longer criminal records have poorer employment opportunities, less family support, and more housing needs, and when they are prosecuted, they must pay restitution or fines and fees that they cannot afford. This perspective is largely supported by literature and by what we know about social inequality and the cumulative disadvantages people of color face throughout the criminal legal system.[49]

For the same open-field question, some ADAs reflected that implicit bias can impact whether ADAs interpret defendants' characteristics and behaviors as mitigating or aggravating (for instance, when defendants are expressing remorse, when they are looking disinterested in court, etc.). Research shows that courtroom actors can perceive certain habits of marginalized groups negatively.[50] For example, courtroom actors use people's ability to make eye contact to assess their credibility, but holding eye contact may be a culturally bounded practice. As such, a lack of cultural-awareness training may lead courtroom actors to mischaracterize actions and factors as mitigating or aggravating, which may make outcomes for marginalized communities worse. Lastly, other ADAs who responded to the open-field question reported that there are generally no people of color in positions of power in courts and that this lack of representation might also impact disparities.

Seventy-four percent of surveyed ADAs (*n*=41) said it is "somewhat" or "very important" to consider racial and ethnic disparities in the criminal legal system when deciding whether to offer a plea and what to offer, and 26 percent (*n*=14) indicated it is "not important" to consider.

How ADAs perceive disparities and what it means to consider them when crafting plea offers is an area that merits further exploration and research. Some actors may not find it important because they do not think disparities exist or because they cannot legally be considered in plea negotiations. The latter was evidenced in the responses of interviewees, who discussed the need to treat people equally, to not advocate for defendants, and to be race neutral. Others may not understand what it means to consider racial disparities or how to put this into practice. Five ADAs we interviewed said they do not see defendants' demographic characteristics before they make offers. For those who do consider it during plea bargaining, it would be important to document the ways this is being done. For instance,

two ADAs we interviewed described considering the timing of past arrests and whether they related to different policies (e.g., tough-on-crime policies, changes to punishments for drug or weapons offenses).

DECISIONMAKING IN INITIAL PLEA OFFERS

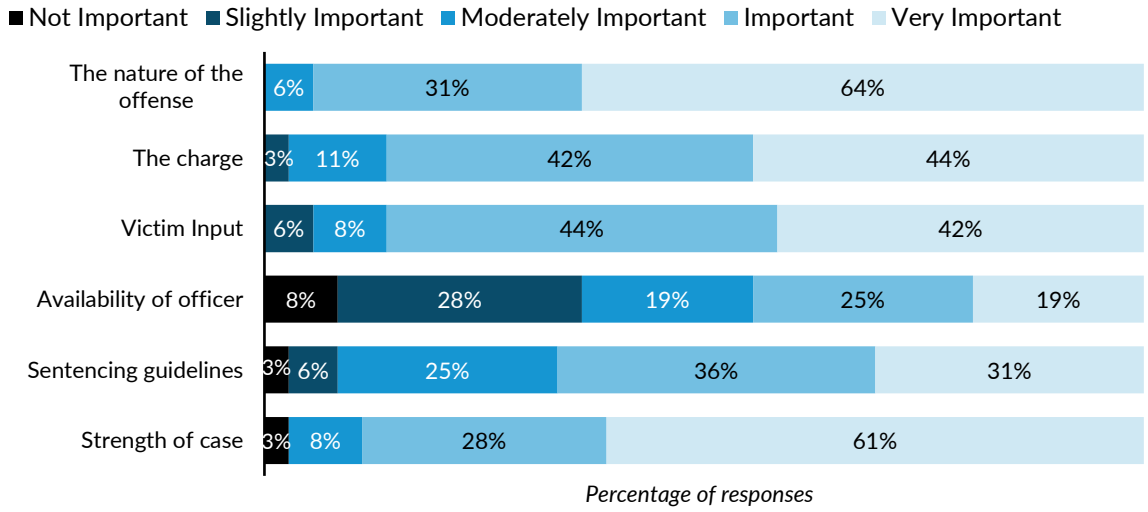
A host of case-level (e.g., charge seriousness), evidentiary (e.g., admissible evidence, victim input), defendant-level (e.g., pretrial detention status, culpability), and mitigating factors influence an ADA's plea bargaining.

The strength of a case is one of the most important case-level factors that can impact a plea offer. According to the 11 ADAs we interviewed, the most common case information that influences offers includes the strength of their case, the seriousness of the offense, the nature of and circumstances around the offense, sentencing guidelines, management of their other cases, and whether their evidence would survive motions to suppress.

Our survey was intended to elucidate which of these case-level factors were most important (figure 10). The factors most commonly considered "very important" were the nature of the offense (64 percent) and strength of the case (61 percent); the factors least commonly considered "very important" were the availability of the responding police officer (19 percent) and the sentencing guidelines (31 percent).

FIGURE 10

How Important Are the Following Case-Level Factors?



URBAN INSTITUTE

Source: Urban Institute 2022 survey of Philadelphia assistant district attorneys.
Notes: Thirty-six respondents. Two missing due to blank surveys.

Some ADAs said they offer more lenient charges and sentences when they have a weaker case. Four ADAs we interviewed said they would offer more lenient pleas if they felt their case was not strong, evidence was inadmissible, or the case would not hold up in a trial. Yet, four people we interviewed who had accepted pleas said one of the reasons they accepted their plea offers was how lenient the offers were. Two defense providers shared that lenient plea offers can coerce defendants into accepting them, which raises ethical concerns about making lenient offers in weaker cases—that a case is weak might mean the defendant is innocent of the charges. Defense providers' concern is that this coercion can lead innocent people to accept criminal convictions.

ADAs hold discretion in assessing defendant-level characteristics that can mitigate or aggravate offers. All 11 ADAs we interviewed said a defendant's criminal history, immigration status, probation status, whether they have other cases pending, and their attitude or remorse are relevant when crafting a plea offer. In our survey, a defendant's criminal history was the most frequently selected as a "very important" defendant-level factor influencing a plea offer (n=16); fewer respondents considered age (n=6) and attitude (n=7) "very important."

ADAs we interviewed and who took the survey shared several defendant circumstances that might mitigate an offer. These include defendants' education and employment status, their family and dependents, mental health, substance use, and, recently, their health concerns related to COVID-19

incarceration conditions. On the survey, six ADAs (18 percent) indicated that ongoing and prospective substance use or mental health treatment was "very important." One ADA said the existence of dependents was a "very important" factor. Age, employment, upbringing, and education were all reported as "very important" factors by three ADAs (8 percent).

Interviewed ADAs said they are more likely to make an offer with incarceration if the defendant is currently in custody. This is partially because they are anticipating that judges would not want to incarcerate someone who has been out of custody and stayed out of trouble. It is also because they can receive time served for the period they have been in custody. Contrarily, being out on bail without picking up additional cases is a mitigating sign for ADAs.

In interviews, we found that a defendant's behavior, level of remorse, and inability to accept responsibility for an offense can all aggravate their sentence. Two ADAs said the defendant's ability to display remorse heavily impacted what offer they would make. However, how the interviewed ADAs saw and interpreted remorse varied widely. One ADA described it as something you can perceive in language or nonverbal cues, whereas for another it is a gut feeling.

This range of understandings of mitigating and aggravating characteristics, particularly regarding displays of remorse, can be a source of disparities.[51] And as we have discussed, cultural differences may lead people to misinterpret nonverbal cues and worsen outcomes.[52]

The judge, police officer, and defense attorney all have different degrees of importance in plea bargaining, according to ADAs. Though 58 percent (*n*=18) of ADAs reported in the survey they did not believe the judge impacts their decisionmaking, 7 of the 11 interviewed ADAs considered judges an influential external factor, and one went further, saying ADAs have to consider the interests of the judiciary. These ADAs noted that knowing which judge they will appear in front of can give them a sense of what may happen at trial. For example, if they know a judge will give a better sentence than an ADA could ever offer, the ADA might not make an offer. One ADA added a judge can decline a plea, so the prosecutor needs to consider the judge and whether they are more lenient or harsher when crafting an offer.

Three defense providers we interviewed said judges appeared more active in plea negotiations as the leadership of a large DAO unit was changing. This is an interesting interview finding because, by their rules of ethics, judges are prohibited from being involved in the plea bargaining process.[53] Those interviewees reported that the plea offers under a particularly harsh supervisor were not being accepted by defense routinely, and in an effort to resolve cases without going to trial, the judges became more active in finding a median for the defense and prosecution. Additionally, if a case is

proceeding too slowly or a judge believes it is lacking evidence, they can dismiss it. Delays in cases processing have been a particular problem during the COVID-19 pandemic.

Three interviewed ADAs said that when collecting evidence, they consider compliance of law enforcement when considering how to craft a plea. Police statements have to be consistent and evidence must be collected legally for an ADA to feel confident that they have a strong case and thus in going to trial. Our survey asked whether the police misconduct disclosure database created under Krasner and the arresting officer's past conduct impacted whether they offer a plea. About 35 percent "always" (*n*=11) consider the conduct of the arresting officer, while only 3 percent "never" consider it (*n*=1).

Lastly, three interviewed ADAs said the defense does not impact their plea offers. Only about 28 percent (*n*=13) of those surveyed said the relationship with the defender on a case impacts their decision of whether to offer a plea, and two expanded that defense only matters enough to provide mitigation and for the ADA to anticipate arguments defense could make.

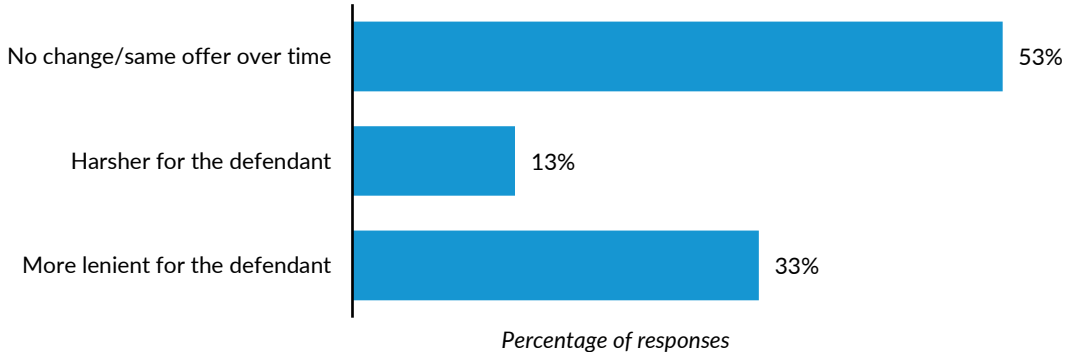
These reflections from ADAs show that actors other than prosecutors and defendants influence plea bargaining and that the actions of judges and other actors at trial can influence the outcomes of plea negotiations.

CHANGES TO PLEA OFFERS THROUGHOUT THE PLEA BARGAINING PROCESS

About 53 percent (*n*=16) of surveyed ADAs reported that plea offers generally do not change or that they made the same offer over time (figure 11). Likewise, for 47 percent (*n*=54) of the cases in the case file review, the outcomes of the initial and accepted offers were the same. Although most pleas do not change, many surveyed ADAs reflected that plea offers often get more lenient for defendants. The rationale is that cases get weaker, so the offers will become better for defendants to avoid trial. One-third of surveyed ADAs and four interviewed ADAs said plea offers get more lenient for defendants because of changes in evidence and witness availability and because of decreases in the likelihood of conviction. One interviewed ADA said if a defendant is dangerous, they will offer more lenient pleas just to get a conviction.

FIGURE 11

How Does Your Offer Generally Change the Longer a Case Proceeds without an Accepted Plea?



URBAN INSTITUTE

Source: Urban Institute 2022 survey of Philadelphia assistant district attorneys.
Notes: Total of 30 responses. One missing due to blank survey.

ADAs will frequently charge and sentence bargain. We grouped charge bargains into three large categories in the survey and asked how frequently ADAs use each of them. About 71 percent (*n*=22) of ADAs "often" or "always" bargained with fewer counts or charges, which was the most common type of charge bargaining selected, whereas only 23 percent (*n*=7) bargained with statutory changes and offense class changes. In interviews, the most commonly cited concessions in plea bargaining were on severity of the lead charge or pleading to the lead charge and withdrawing any other charges on their case. The overwhelming majority of surveyed ADAs (*n*=31, 84 percent) said they make both charge bargains (e.g., pleading to a lesser offense) and sentence bargains (e.g., lowering sentence bounds) bargains.

Four surveyed ADAs indicated they would only offer sentencing bargains (11 percent). We also sought to understand which type of sentence bargains were most often given. Short incarceration periods and community supervision instead of incarceration are most often used. Less commonly used are lower fees, which are normally up to the court to assign, and offers of diversion.

ADAS BELIEVE THERE ARE LARGER CONSEQUENCES TO DEFENDANTS WHO GO TO TRIAL

After some interviewed ADAs reflected on how a defendant's outcome can change if they decline plea offers and exercise their right to a trial by jury, we decided to ask all ADAs about this in the survey. Almost three-quarters of ADAs who responded said there are larger consequences for defendants who go to trial, also known as the trial penalty (*n*=41).

Two factors might make outcomes at trial worse for defendants. First, cases that make it to trial are generally perceived by ADAs to be stronger. Interviewed ADAs stated that they will try to plea out weaker cases rather than take them to trial. Second, ADAs could be making offers that are more lenient than anything a judge would decide in court because of progressive policies under District Attorney Krasner. It is clear that, though plea bargaining is normally an act between a prosecutor and a defense attorney on behalf of their client, external actors (like judges) and associated factors impact their decisionmaking. Plea bargaining is not a siloed event.

DEFENSE PROVIDERS' AND DEFENDANTS' PERCEPTIONS OF PLEA NEGOTIATIONS AND OUTCOMES

Defense providers offered some insight into their decisionmaking around recommending plea offers, and they offered policy recommendations for judges and prosecutors on how to reform plea bargaining. Also, people we interviewed who had accepted pleas all shared their frustration that the process took months, and they all also reported having only 15 minutes to decide whether to accept a plea. Further, most people felt the system is too overwhelmed to provide individual justice for each person. The overall theme from our interviews with defense providers and defendants is that the process of plea bargaining is flawed and a solution for it cannot be limited to one actor or one case processing point.

Some of the main pressures on defendants and considerations for defense providers in plea negotiations are certainty of the results and long case processing times. After learning more about their cases, we interviewed people who had accepted pleas in Philadelphia about what motivated them to accept. All five people accepted the pleas for two major reasons: timing and certainty. Each reflected that the certainty of outcomes was compelling for them and worried that outcomes at trial would be worse. Another said they were worried they would be sent to state prison rather than county jail. Further, four of the five took the first offer because they were told that it would only get worse for them after that and that the offer they accepted was particularly lenient. Defense providers also overwhelmingly noted that in several cases the uncertainty of trial outcomes led them to recommend that their clients accept a plea offer.

Everyone who had accepted a plea had been shocked by how long the whole process was, yet also by how short certain parts of it were. They said their proceedings were delayed or took several months to resolve but that they had only 15 minutes to hear the offer and decide whether to accept it. The fact that there had been several delays in their cases and that their cases had been in process for several months also pressured them to accept pleas just to resolve their cases quicker.

Defense providers and people who have gone through the system consider judges very influential in the decision to plead guilty. Similar to what we heard in interviews with ADAs, the judges they were in front of impacted defenders' risk calculations, including what the trial penalty would be. People who accepted pleas reflected something similar. One person said their judge threatened them and said that the longer they waited until they accepted responsibility, the larger the sentence would be.

All four public defenders added that judges had become more involved in plea bargaining, particularly within the previous year, because ADAs had been consistently making "bad offers" that were essentially non-negotiable and had no chance of being accepted by defendants. The defenders said the judges became the intermediaries to try to negotiate with ADAs and resolve cases with pleas acceptable for all parties, which seemingly goes against the judicial rules of ethics.[54]

Pretrial custody can coerce defendants into accepting plea offers. When considering whether a defendant should accept a plea, one of the most common things defense providers consider is whether their client is being held in custody pretrial. They said pretrial detention coerces their clients into accepting pleas, making clients eager to resolve their cases quickly no matter the strength of their case. They added that defense has more leverage to argue for out-of-custody outcomes when they are already out of custody.

Two of our interviewees who accepted pleas were detained pretrial, and both said being held in jail for months made them want to do anything to get released. One had a mental health condition when they accepted their plea and had not been getting medication for their anxiety while in custody.

People going through the criminal legal system are not given enough information or time to properly understand the consequences of accepting a plea or their ability to advocate for themselves. People who accepted pleas felt they did not fully understand their pleas, particularly not all the consequences they would have. Judges are required to explain the maximum sentence exposure a defendant could face, but several people who accepted pleas said the entire process was confusing and wished they had more support to understand what was happening. Similarly, defense attorneys overwhelmingly reflected that their clients do not know all the collateral consequences of accepting a plea other than those involving immigration status, housing, and employment.

Four of the five people who had accepted pleas said they never felt they were treated as individuals throughout the process and that their specific circumstances were not considered. Some added they were only a number to the court, especially because they only had a maximum of five minutes in front of the judge. One said they had a better experience but that one's experience depends on the judge and the defender.

Defense providers and people who accepted pleas would make a wide range of reforms to plea bargaining processes. Among the defense providers, the two most common recommendations for reforming plea bargaining were to limit the power of prosecutor supervisors and to eliminate or cap the trial penalty (a reform for judges, not prosecutors). Three defense providers said supervisors do not know the cases as well as the prosecutor on the case.

One defense provider said that if an ADA believes a case can be resolved fairly by offering a client a lower sentence or charge, they should not be able to proceed with a higher sentence or higher charge. One defense provider reflected on the use of the sentencing guidelines and believed they are flawed and too universal to identify appropriate sentences in individual cases. Defense providers also advocated that if an offer includes a noncustodial outcome, the defendant should not be detained.

Two defenders reported that the problems with the criminal legal system are not specific to plea bargaining; though most resolutions occur through plea bargaining, they believe the sheer volume of the system is the major problem and what incentivizes all parties to plea. They added that you cannot do individual justice to a case within an overwhelmed system. The people who accepted pleas felt similar; some added that the system is so overwhelmed with cases that people do not understand how their actions impact individuals and someone's life can be destroyed. They added that large caseloads lead judges, prosecutors, and defenders to see people as numbers, which does not create justice.

A primary recommendation from people who had accepted pleas was that the entire process should be accelerated; by the time one is offered a plea, the system has exhausted one into accepting it. However, one person added that the process also needs to slow down once it's time to consider the actual plea offer.

Three of the five people who accepted pleas said there needs to be more information about the case process and the plea offer. Specifically, there should be more transparency about all the potential impacts of accepting the offer. One defense provider echoed this recommendation. One added that having an advocate who is not your attorney would help facilitate this.

Defense providers are split on the impact of Krasner's progressive goals largely because they believe ADAs do not hold similar goals. Defense providers were generally divided on what impact Krasner has made in the DAO. Two defense providers said he has a lofty vision but that it is difficult to change cultures in which people have traditional tough-on-crime mentalities. Another five defense providers said some areas have changed for the better but others have been stagnant. Three public defenders said conflicting things on where their clients have benefited from Krasner's policies: two said the polices

have benefited people with low-level offenses, and one said the progressive work in the office is only for high-level charges, noting that the office still charges marijuana possession.[55]

Four defenders also reflected on Krasner's new staff and his management of them. Two defense providers said Krasner is hiring people from prestigious law schools who want to make a difference but that they are often inexperienced, young, and "cavalier about keeping people in jail," as one put it. One defender added that the DAO's structure, even since Krasner took office, is such that a prosecutor needs convictions in order to start doing trials. Defense providers also reflected that although Krasner's supervisor picks were purposeful and shared his vision when he first took office, more recently appointed supervisors are less hand-picked. However, our partners at the DAO DATA Lab reflected that the DAO has made supervisor changes since this study began to make Krasner's vision more consistent. Another defense attorney added that Krasner has become less engaged in the office in general; the messaging to ADAs has become inconsistent, and it appears to the defense provider that recent policies have not come from him.

Limitations of This Study

As with all research, this exploratory study is subject to some limitations. Below we describe the limitations specific to each data source.

Administrative Data

The administrative data used for this analysis come from the Philadelphia First Judicial District. Those data provide a lot of detail on general demographic and case processing characteristics (e.g., charges, counsel type, key dates, and sentence outcomes) but do not include any details about plea offers other than whether a guilty plea was entered and the final sentence outcome. Additionally, we identified some discrepancies in outcomes reported in administrative data compared with case files, though the number of such discrepancies was minimal. Lastly, administrative data are missing cases that were sealed or expunged at the time data were transferred to ISLG, which impacts the percentage of each outcome represented as withdrawn, nolle prosequi, and dismissed.

Also, in response to the research questions and this scope of work, analysis of administrative data in this report is purely descriptive and exploratory. The purpose of this analysis is to describe what we observe in the administrative data, not to make causal claims or claims about what components of the criminal legal system are driving the disparities we observed.

Case File Review

Though our case file review provided more insight into the plea bargaining process than the administrative data, the case files still had limitations. The ADA case files did not consistently include information on key data elements of interest, such as the number of offers made, the decisionmaking of prosecutors in determining initial offers, the aggravating or mitigating factors involved, or how plea offers changed. This is unsurprising, given that there are limited standards and requirements on what prosecutors must record in case files related to plea offers.

Policy Review

We were able to review policies initiated by Krasner and a district attorney handbook from 2017 that goes through court operations and office organization. However, we were unable to access policies instituted by the previous administration, meaning we are not aware of how policies have changed. We tried to bridge this gap by interviewing ADAs with tenures that spanning both administrations.

Interviews

We picked a sample of people to represent a larger population. We learned of the large influence judges had in plea bargaining in Philadelphia through our interviews, but we were not able to complete interviews with judges during our study period. Additionally, we were unable to speak with many current public defenders. We interviewed four public defenders during a time of transition in supervision in the DAO, and much of the focus from those interviews was on the decrease in ADAs' discretion. Since those interviews, the supervisors seem to have been replaced and discretion has increased. Our findings should be understood in that context.

Survey

Though we intended to survey many ADAs in the DAO, we only achieved a 29 percent response rate, which could owe to several factors. The office is facing turnover as ADAs exit the office frequently and overwhelm remaining ADAs with their work; completing a survey is the least of an ADA's concerns. Further, some respondents whose roles did not include plea bargaining may not have been interested in responding to a survey about that subject, though several questions were universal to prosecutors no matter their involvement in plea negotiations. Lastly, prosecutors do not engage in research frequently and may distrust researchers, particularly those from external organizations.

Policy Implications

Our findings suggest several implications for plea bargaining policies and practices in Philadelphia, many of which could be applicable to other jurisdictions. The reforms we recommend in this section alone will not address all racial disparities in the criminal court system; to fully remedy racial disparities that we uncovered, the field must consider all of the system points at which decisions are made and all of the actors involved in those decisions.

There Should Be Standards for Recording Plea Offer Data in Prosecutor and Court Case Management Systems

As we learned in this project, prosecutor offices hold much discretion over plea bargaining, but there were limited ways to empirically measure how plea bargaining can contribute to disparities in case outcomes. The Philadelphia DAO is on the cutting edge of research and data-driven policies, but ADAs still document information around plea bargaining inconsistently; some input that information in a case management system and others only document the offers in emails. Additionally, while the court maintains some information about final plea outcomes, there are no data in the court case management system on the plea offers extended (e.g., offer dates and whether they were accepted).

Prosecutors' offices would benefit from consistently recording data around each plea offer they extend throughout the course of a case, and court data standards could facilitate collection of data on plea offers and acceptance. This will enable them and the field to learn more about how plea bargaining changes and accurately identify cases that result in an accepted plea. There are currently efforts being made to standardize court data,[56] and others have created prosecutor-relevant data-collection toolkits.[57] All prosecutors' offices, including Philadelphia, would benefit from the consistent collection of these data, and the field should consider national standards around the data being recorded in these case management systems.

Critical to increasing data capacity is increasing funding. To support unprecedented and nontraditional data collection and analysis, jurisdictions should receive funding for case management systems with sophisticated record keeping and analytic capacities along with more dedicated data staff. Without this data capacity, the ability to have oversight in an office and proper assessment of policy reforms is limited. This leads us to our next policy recommendation.

More Mechanisms for Examining Plea Bargaining Decisionmaking and Adherence to Office Policy Should Be Instituted

Krasner's policy mandating that plea offers be below the bottom end of the mitigated range of the Pennsylvania Sentencing Guidelines for most crimes is intended to address mass incarceration and mass supervision, but few ADAs could recall this policy during interviews. A policy is only as good as it is consistently implemented.

The DAO's DATA Lab has examined adherence to office policies by measuring compliance with DAO policies to end mass supervision. Those policies are intended to regulate plea offers by capping supervision lengths and setting goals for officewide averages. After years of implementation, the DATA Lab has demonstrated that compliance with community supervision policies is high.[58] This important monitoring progress can be further applied by assessing plea bargaining policy compliance more often.

Further, ADA plea bargaining decisionmaking should be checked to ensure justice is being provided for all. Only 23 percent of ADAs reported that there were checks on prosecutorial decisionmaking related to pleas. Reviews of ADAs' performance could include a metric on how well they follow officewide policies, when relevant for their cases.

ADAs Would Benefit from Proper Training and Continuous Communication of Officewide Policies Related to Plea Bargaining

Krasner created several policies to address overincarceration and long community supervision periods, and other communities might benefit from similar reforms. However, such changes cannot be implemented with fidelity if ADAs are not properly trained on how to do this work well. Seventy-four percent of surveyed ADAs said there was not training specific to plea offers. This is largely emblematic of all prosecutors' offices; they are not particularly adept at finding systemic problems, learning from them, and working to improve them.

Our ADA interviews made it clear there are some intangibles related to plea bargaining that do not lend easily to training, including assessing remorse or mitigating and aggravating factors. However, there is still opportunity to train inexperienced ADAs on the DAO's policies and goals for plea bargaining so they can make better decisions and train them to follow policy unless a circumstance is unique enough that it requires deviation.

Prosecutors Should Consider Withdrawing Cases with Weak Evidence Rather Than Extending Coercively Low Plea Offers

Some of the most commonly cited goals for plea bargaining reported in our ADA interviews related to court efficiency. However, there are times where expediting cases works to the detriment of fairness and justice. Resolving cases quickly through plea offers might lead to erroneous assessments of guilt and innocence. Almost half of surveyed ADAs indicated defendants "sometimes" or "often" accept pleas when they are innocent. If a prosecutor has serious doubts about their ability to win at trial, they could use their discretion to withdraw the case rather than proceed with a plea that might be coercive. Though withdrawal and dismissal rates are fairly high at the DAO (66 percent of all cases in 2022 thus far),[59] ADAs we interviewed and surveyed reported that they commonly offer low pleas when cases are weak and will not win at trial, and defenders raised concerns about this practice. ADAs have the discretion to decline or withdraw cases when prosecution will not serve the interests of justice and exercise it regularly.[60] They should consider whether such cases meet the probable cause requirement at charging, but this consideration should be elevated throughout the case process and before each offer is extended, especially considering changes in admissible evidence.

Efforts Should Made to Mitigate Heavy Trial Penalties

Plea bargaining is situated in a larger system that requires broader reform to provide equal justice for all. People may often feel compelled to accept a plea offer because of the difficulty with taking their case to trial and the fear that they will receive a worse outcome if they do so. Almost three-quarters of surveyed ADAs reflected that they believe the trial penalty is a reality for defendants, and we found in interviews with directly impacted individuals that people have chosen not to exercise their Sixth Amendment rights because of the threat of longer sentences if they went to trial. Actual and perceived trial penalties can create undue coercion to accept a plea.[61] More broadly, heavy trial penalties raise questions of fairness. Sentence lengths that depend on the mode of conviction go against a person's fundamental right to a fair hearing and defense.

One recommendation is to ensure that sentence lengths for cases disposed by trial do not exceed the most lenient plea offer by a certain percentage.[62] This can be done by requiring prosecutors or the defense bar to enter into the record the most lenient offer provided during plea negotiations or by establishing judicial review of plea offers (by a separate judge) before going to trial.[63] With these practices in place, policymakers can create a recommended cap on the sentence that a judge can impose above the most lenient plea offer made by the prosecutor. These steps would still allow for a

plea discount but bring trial and plea sentences more in line. It could also reduce the coercive nature of steep trial penalties, whether real or perceived.

The Pennsylvania Sentencing Guidelines Should Be Revised

Another system-level recommendation is to revise the state's sentencing guidelines matrix. Several ADAs and defense providers agreed in interviews that the sentencing guidelines, which dictate all sentences, reinforce and exacerbate racial disparities. Because the plea bargaining system is so closely tied to sentencing guidelines, the actions of ADAs and judges are largely stuck to these recommendations. The guidelines and matrix should be reevaluated through a racial equity lens, particularly to determine whether they are reducing disparities, having no impact, or increasing them. Sentencing guidelines should continuously be evaluated for their impact on disparities and be modified accordingly.

Conclusion

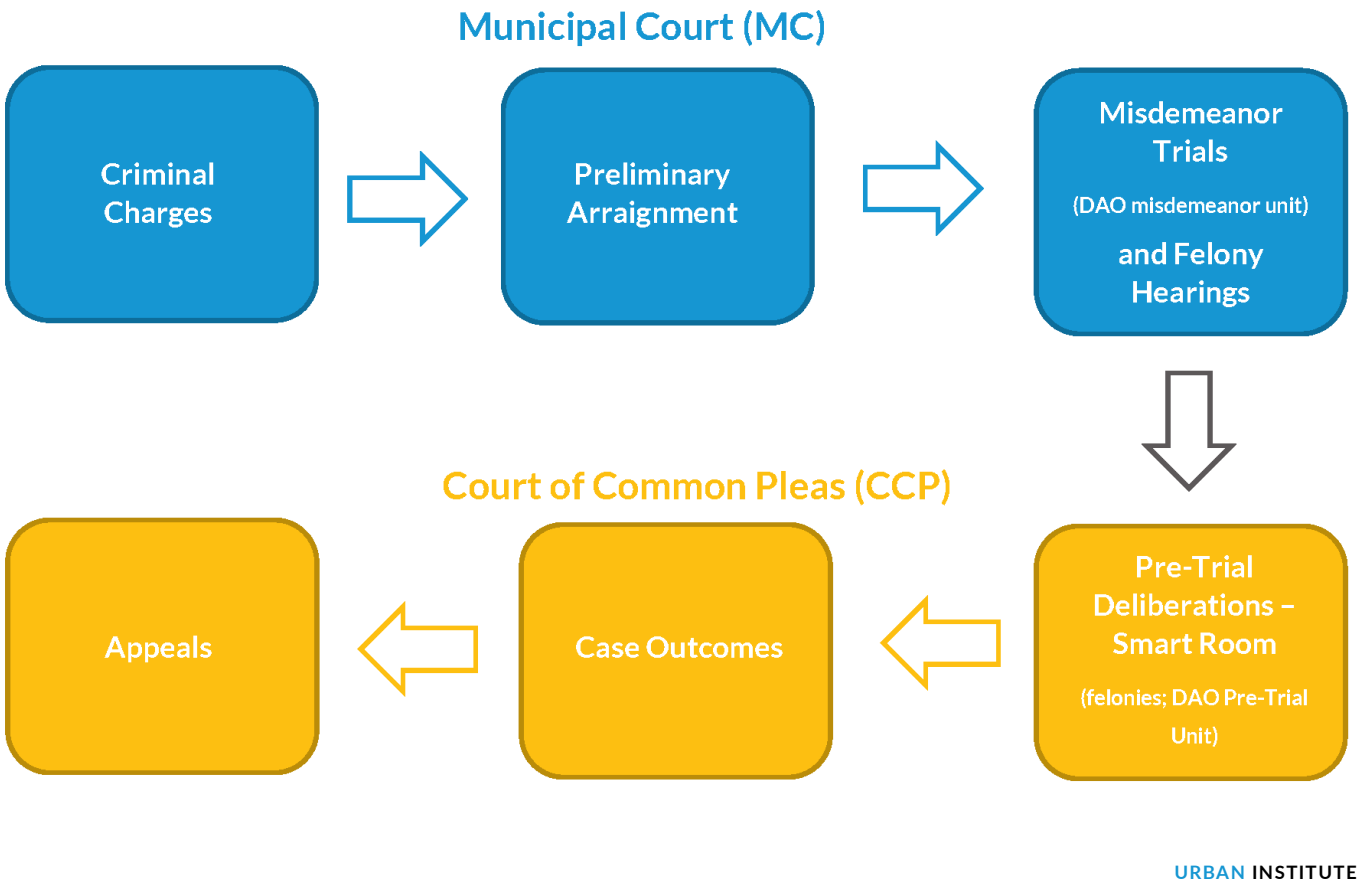
Plea bargaining has been the most common method of case resolution for the past several decades, but little is known about the practice or trends in plea outcomes. In our single-site, exploratory study, we examined factors influencing prosecutorial discretion in negotiated plea bargaining and sought to learn more about trends in plea offers and negotiations.

Though our findings enabled a series of recommendations, we cannot accurately assess policy impacts without data. Implementing standards for data collection in prosecutors' offices would make it possible to assess the trends and disparities in plea offers empirically. Reducing case backlogs, limiting case volumes, and removing barriers inhibiting people from exercising their Sixth Amendment right to a trial might lead to a more just criminal legal system that relies less heavily on plea bargaining.

Appendix A

FIGURE A.1

Case Processing in Philadelphia



Source: Urban Institute.

Appendix B

TABLE B.1

Case File Sample Demographics

	MC		CP Court	
	Case File Sample (*N*=24)	All Negotiated Guilty Plea Cases in Administrative Data 2016 & 2019 (*N*=6,840)	Case File Sample (*N*=91)	All Negotiated Guilty Plea Cases in Administrative Data 2016 & 2019 (*N*=9,893)
	Mean			
Age at disposition	36	37	34	34
Minimum sentence length for probation in months	0.0	0.0	1.2	0.8
Maximum sentence length for probation in months	7.4	5.4	26.1	37.9
Minimum sentence length for incarceration in months	0.0	0.4	4.6	8.4
Maximum sentence length for incarceration in months	0.0	1.5	18.5	27.2
	Percentage			
Sex: Female	21%	17%	14%	11%
Race: American Indian/Alaskan Native	0%	0%	0%	0%
Race: Asian	0%	1%	0%	1%
Race: Bi-racial	0%	0%	0%	0%
Race: Black	50%	53%	61%	61%
Race: White	50%	46%	39%	38%
Felony lead charge	4%	2%	70%	75%
Sentenced to incarceration	8%	26%	42%	61%
Sentences to probation only	79%	59%	56%	38%
Sentenced to probation	88%	78%	90%	88%

Source: Urban Institute 2022 study of plea bargaining in Philadelphia.

Appendix C

TABLE C.1

Policy Review Documents

Document title	Date Enacted	Summary
Assistant District Attorney's Handbook*	November 6, 2017	This Handbook is used as a guide for ADAs working in the Municipal Court. It details both the organization of the office as of early November 2017, an overview of the criminal legal process in Philadelphia, standards and exceptions, and policies and practices for working in court.
New Policies **	February 15, 2018	These are the first policies under DA Krasner, and they reflect some of the policies he prioritized in his campaign. Some of these policies relate to declination, diversion, charging, reentry, plea offers, and sentencing recommendations.
Policy on Bail	February 21, 2018	This policy lists charges for which ADAs should presumably not ask cash bail. However, they do have discretion to ask for monetary bail where justice requires.
Conflicts Policy	March 1, 2018	This policy details the types of connections to a case that are conflicts of interest. Whenever conflicts arise, the person cannot be staffed on the case, talk to other staff about the case, and access files on the case.
Policy on Expungement and Refile	May 2, 2018	This policy spells out presumptions of expungement for acquittals, summary convictions, and diversionary disposition. Additionally, it says the office will seek expungement when someone has been wrongly accused or for cases and charges that have been dismissed or nolle prossed, with limited exceptions.
Policy on Avoiding Unjust Immigration Outcomes	November 27, 2018	This policy stipulates that the office's immigration counsel will review cases that could have disproportionate immigration consequences if convicted. They will advise on what, if any, charges could be made to reduce consequences. There are also guidelines on what to do and presume if an ADA comes across a case where there may be immigration consequences with a conviction.
Policy on Cannabis DUI	December 3, 2018	This policy details how an ADA should proceed on a cannabis DUI case depending on the blood level of cannabis.
Introduction to Juvenile Policies	January 10, 2019	This policy offers presumptions for ADA decisions on juvenile cases around pre-adjudicatory offers, the juvenile reporting consent decree, detention, dispositions, hearings, solitary confinement, and bench warrants.
Policy on Improving Assistant District Attorney Communication with Victims of Crime	January 31, 2019	This policy highlights the goals for communication with victims and honoring victims' rights.
Accelerated Misdemeanor Program Policy	February 4, 2019	This policy states that the DAO is increasing access to diversion by loosening eligibility requirements. The policy seeks to remove barriers for people to enter the Accelerated Misdemeanor Program.
New Policies to End Mass Supervision (modifies some of "New Policies" memo) **	March 21, 2019	This policy dictates how ADAs should proceed when recommending supervision on probation or parole. There are specific ranges for plea offers recommended in this policy.

Policy on Fines and Costs	June 27, 2019	This policy offers support for waiving fines and costs when someone is indigent, when to assume someone is indigent, and presumptions for fines and costs, including restitution, for defendants who are indigent.
Policy Relating to The Clean Slate Act	June 27, 2019	This policy lists rules on when and how ADAs may use 1) non-conviction charge information and 2) old misdemeanor conviction information in subsequent prosecutions of a defendant
Buprenorphine/Suboxone Possession Arrests and/or Pending Cases	January 28, 2020	This policy says that ADAs should withdraw pending cases and decline charging future cases involving mere possession charges of Buprenorphine.
*Acceleration of DAO Reforms in Response to COVID-19 Emergency (Modifies "Policy on Bail") **	March 16, 2020	This policy was created at the start of the COVID-19 pandemic to reform bail policies that could leave people in jail unnecessarily. This essentially eliminates cash bail for all offenses, presumes people charged with non-violent felonies and misdemeanors should not be held pretrial, and says those with violent felonies and other truly serious offenses should be held without bail. These rules are still up to individual discretion. It also states that ADAs should delay prosecution for those whose immediate arrest is not necessary. It ends with a call to work with the Public Defender to review early parole or release petitions, bail reduction requests, and request to lift detainers for those who do not present a public safety threat.
Disclosure of Exculpatory, Impeachment, or Mitigating Information and Open-File Discovery (Brady Policy)	October 1, 2020	This policy is also considered the "Brady Policy," since it follows rules set for prosecutorial conduct working with defense. There are certain obligations for reporting exculpatory, impeaching, and mitigating information. Additionally, this policy mentions the DAO is attempting to set up "open-file discovery," to be as transparent with evidence, apart from privileged information, as possible.
Women Centered Policies	October 1, 2020	This policy highlights special considerations that should be taken into consideration during charging and sentencing for women in particular.
Policy Regarding Fentanyl Test Strips	January 29, 2021	This policy mandates that mere possession of fentanyl testing strips should be declined for charging.
*Supervision Policies Part III (Modifies "New Policies to End Mass Supervision" memo) **	January 1, 2022	It is an updated policy on supervision and details the various guidelines in place that advance the goal of expanding early termination of probation. Some rules are at the plea negotiation and sentencing stage, others refer to technical violation decisionmaking and programming incentives in prison and jail.

Notes:

*This policy was in place before District Attorney Krasner took office.

**These memoranda were mentioned in the narrative as particularly relevant to plea offers and negotiations.

Appendix D

Figure D.1 shows the sentencing guideline matrix as of 2020. For our administrative data analysis and case file review, the matrix being used was from 2019, which looks slightly different than the image pasted in this report.

FIGURE D.1

Pennsylvania Sentencing Guideline Matrix

Level	OGS	Prior Record Score								AGG/MIT
		0	1	2	3	4	5	RFEL	REVOC	
LEVEL 5	14	72-SL	84-SL	96-SL	120-SL	168-SL	192-SL	204-SL	SL	~/-12
	13	60-78	66-84	72-90	78-96	84-102	96-114	108-126	240	+/- 12
	12	48-66	54-72	60-78	66-84	72-90	84-102	96-114	120	+/- 12
	11	36-54	42-60	48-66	54-72	60-78	72-90	84-102	120	+/- 12
	10	22-36	30-42	36-48	42-54	48-60	60-72	72-84	120	+/- 12
	9	12-24	18-30	24-36	30-42	36-48	48-60	60-72	120	+/- 12
LEVEL 4	8	9-16	12-18	15-21	18-24	21-27	27-33	40-52	NA	+/- 9
LEVEL 3	7	6-14	9-16	12-18	15-21	18-24	24-30	35-45	NA	+/- 6
	6	3-12	6-14	9-16	12-18	15-21	21-27	27-40	NA	+/- 6
LEVEL 2	5	RS-9 P2 (225-250)	1-12	3-14	6-16	9-16	12-18	24-36	NA	+/- 3
	4	RS-3 P1 (100-125)	RS-9 P2 (225-250)	RS-<12 P2 (300-325)	3-14	6-16	9-16	21-30	NA	+/- 3
	3	RS-1 P1 (50-75)	RS-6 P1 (150-175)	RS-9 P2 (225-250)	RS-<12 P2 (300-325)	3-14	6-16	12-18	NA	+/- 3
LEVEL 1	2	RS (25-50)	RS-2 P1 (75-100)	RS-3 P1 (100-125)	RS-4 P1 (125-150)	RS-6 P1 (150-175)	1-9	6- <12	NA	+/- 3
	1	RS (25-50)	RS-1 P1 (50-75)	RS-2 P1 (75-100)	RS-3 P1 (100-125)	RS-4 P1 (125-150)	RS-6 P1 (150-175)	3-6	NA	+/- 3

Source: Pennsylvania Commission on Sentencing.

Notes

[1] Tran, Tyler, Sangeeta Prasad, Dana Bazelon, Christopher Austin, Molly Pickard, Mike Lee, Oren Gur, and Michael Hollander. 2021. "Ending Mass Supervision: Assessing Reforms." Philadelphia, PA: Philadelphia District Attorney's Office.

[2] The National Registry of Exonerations. "Exonerations Total by Year." Accessed on September 9, 2022. https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx.

[3] Higher charge severity, called offense gravity scores, and prior record scores lead to higher recommended sentences in the Pennsylvania Sentencing Guidelines.

[4] There are different types of guilty pleas, including open or non-negotiated pleas and negotiated pleas. Open pleas occur when a defendant admits guilt but allows the judge to decide the sentence rather than accept a plea agreement.

[5] Ivsan, Inga. 2017. "To Plea or Not to Plea: How Plea Bargains Criminalize the Right to Trial and Undermine Our Adversarial System of Justice." *North Carolina Central Law Review* 39(2): 150; Hessick, F. Andrew. 2002. "Plea Bargaining and Convicting the Innocent: The Role of the Prosecutor, the Defense Counsel, and the Judge." *Brigham Young University Journal of Public Law* 16(2): 189-242.

[6] Scott, Robert E. and William J. Stuntz. 1992. "Plea Bargaining as Contract." *The Yale Law Journal* 101(8): 1909-1968.

[7] Subramanian, Ram, Leon Digard, Melvin Washington II, and Stephani Sorage. 2020. *In the Shadows: A Review of the Research on Plea Bargaining*. Washington, DC: Vera Institute of Justice.

[8] Hessick III, F. Andrew, and Reshma M. Saujani. 2001. "Plea Bargaining and Convicting the Innocent: The Role of the Prosecutor, the Defense Counsel, and the Judge." *BYU J. Pub. L.* 16: 189.

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[45] There were 11 observations with missing pretrial offer information, but we found no noticeable demographic differences between the total sample and the observations with missing information.

[46] Grade severity refers to the categorization of the offense. Crimes are categorized, from least to most severe, as infractions, misdemeanors, and felonies. Misdemeanors and felonies have degrees for their seriousness within those offense types. For example, a first-degree felony is more serious than a third-degree felony.

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